

# Exhibit F

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IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

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IN RE: NATIONAL PRESCRIPTION MDL No. 2804  
OPIATE LITIGATION

Case No.  
17-md-2804

Judge Dan Aaron  
This Document Relates To: Polster

Track Seven.

~~~~~

Remote videotaped deposition of  
JACK E. FINCHAM, Ph.D.

May 24, 2023  
10:00 a.m.

Renee L. Pellegrino, RPR, CLR  
(Appearing Remotely)

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10           ~ ~ ~ ~ ~

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1                   THE VIDEOGRAPHER: We're on the  
2 record at 10 a.m. Today's date is May 24,  
3 2023. This is in the matter of National  
4 Prescription Opiate Litigation. The witness  
5 today is located in Mount Pleasant, South  
6 Carolina.

7                   Please note that this deposition  
8 is being conducted virtually by Veritext. The  
9 quality of recording depends on the quality of  
10 camera and microphone and internet connection  
11 of participants. What is heard from the  
12 witness and viewed on the screen is what will  
13 be recorded.

14                   Would counsel please state  
15 appearances for the record and whom you  
16 represent, beginning with the noticing  
17 attorney?

18                   MS. WOHL: This is Gabriele Wohl  
19 from Bowles Rice representing Kroger.

20                   MR. ELSNER: And this is Michael  
21 Elsner from the law firm of Motley Rice on  
22 behalf of Montgomery County.

23                   MS. BAVERMAN: Jessica Baverman  
24 from the law firm of Vorys on behalf of  
25 Kroger.

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1                   MR. DYE: This is Jordan Dye from  
2 the law firm Bowles Rice for Kroger.

3                   MS. BOBBITT: Ebony Bobbitt with  
4 Motley Rice for the Plaintiff.

5                   MS. SALTZBURG: And this is Lisa  
6 Saltzburg with Motley Rice for the Plaintiff.

7                   MR. ELSNER: I believe my  
8 paralegal -- one of my paralegals is also on  
9 from Motley Rice.

10                  THE REPORTER: Can you give me the  
11 name?

12                  MR. ELSNER: Sam Misischia and  
13 Amanda Unterreiner.

14                  JACK E. FINCHAM, Ph.D., of lawful age,  
15 called for examination, being by me first duly  
16 sworn, as hereinafter certified, deposed and  
17 said as follows:

18                  EXAMINATION OF JACK E. FINCHAM, Ph.D.

19 BY MS. WOHL:

20 Q. Dr. Fincham, hello.

21 A. Good morning.

22 Q. How are you this morning?

23 A. Very fine. Hope you are, too.

24 Q. Great. Thank you.

25 And we are proceeding remotely.

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1 Is there anyone in the room with you?

2 A. Mr. Elsner is in the room and  
3 that's it.

4 Q. And I think you've been deposed  
5 before; is that correct?

6 A. That's correct. Yes.

7 Q. So you know kind of the ground  
8 rules here, but if for any reason you don't  
9 fully hear or understand a question that I ask  
10 you, let me know so I can repeat it, okay?

11 A. Very good. Thank you.

12 Q. And if you answer a question, then  
13 I'll assume that you both heard and  
14 understand; is that fair?

15 A. Yes.

16 Q. I try to take breaks about once an  
17 hour. If you need a break, just let me know  
18 if I'm not getting to one, okay?

19 A. Very good. Thank you.

20 Q. Dr. Fincham, is this the only  
21 opioid case you've worked on?

22 A. Yes, it is.

23 Q. And when did Plaintiff's counsel  
24 first reach out to you about writing a report?

25 A. It was January of this year, 2023.

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1           Q.     And I was recently sent an invoice  
2 of yours that logged your time through  
3 February. Have you been paid on that March  
4 invoice?

5           A.     Yes, I have.

6           Q.     And have you spent any more hours  
7 on this case since then?

8           A.     The total number of hours that  
9 I've spent to date is 106, and that includes  
10 what was in that initial billing spreadsheet.

11          Q.     And did you spend time preparing  
12 for this deposition?

13          A.     Yes, I did.

14          Q.     How long?

15          A.     Probably 15 hours approximately.

16          Q.     Who did you meet with in preparing  
17 for this deposition?

18          A.     I met with Mr. Elsner and two  
19 paralegals, Amanda and Sam.

20          Q.     Did you review anything in your  
21 preparation?

22          A.     Yes, I did.

23          Q.     What did you review?

24          A.     I reviewed my report, which I had  
25 completed. I reviewed both of the Ohio Board

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1 of Pharmacy surveys from 2020 and 2021. I  
2 reviewed Ms. Selzer's, Dr. Selzer's report as  
3 well as her deposition, and other materials  
4 that are listed in my report as far as the  
5 references that I utilized.

6 Q. Dr. Fincham, do you plan to  
7 testify at trial in this case?

8 A. Yes.

9 Q. Can you tell me what exactly you  
10 were asked to do here by Plaintiffs?

11 A. I was asked to review the report  
12 that Dr. Selzer has submitted analyzing the  
13 2021 Ohio Board of Pharmacy survey of  
14 pharmacists.

15 Q. And just review it? Were you  
16 asked to rebut it?

17 A. I was asked to review it and, as a  
18 result of that review, I wrote my report.

19 Q. Do you understand your report to  
20 be a rebuttal of Dr. Selzer's opinions?

21 A. I'm not sure I understand what a  
22 rebuttal is per se.

23 Q. Okay. In what you've submitted, I  
24 see a list of two cases that you've testified  
25 in or been deposed in, and you mentioned that

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1 you've served as an expert witness and have  
2 been deposed in numerous cases over the last  
3 20 years?

4 A. Yes. That's correct.

5 Q. Let me ask, as an expert witness  
6 were you ever asked to analyze the validity or  
7 intent of a survey or questionnaire?

8 A. Not to this point in time, no.

9 Q. And were you ever asked to  
10 critique another expert's or anyone's analysis  
11 of a survey or questionnaire as an expert  
12 witness?

13 A. Not from a legal point of view,  
14 no.

15 Q. And what do you mean by that, "not  
16 from a legal point of view"?

17 A. Because I've reviewed surveys and  
18 survey research for the past 40 years  
19 thousands of times.

20 Q. But not as an expert witness?

21 MR. ELSNER: Objection.

22 A. As an expert reviewer and as a  
23 professional reviewer with credentials to  
24 examine survey research and survey  
25 methodology.

1           Q.     Okay. Just help me understand  
2 your answer. So I asked you if you were ever  
3 asked to critique another expert's or anyone's  
4 analysis of a survey or questionnaire. You  
5 said, I think, not from a legal standpoint.  
6 What other standpoint would you have been  
7 asked to critique an analysis of a survey or  
8 questionnaire?

9           A.     As an academic professor reviewing  
10 other individuals' work that were submitted  
11 either for publication or as part of their  
12 thesis or Master's degree submissions.

13          Q.     You cited two cases, and I want to  
14 ask you about the Pamela Tackett case, which I  
15 think was a criminal case. Can you tell me  
16 what your role in that case was?

17          A.     This was a case that was brought  
18 against Ms. Tackett, who was in a car wreck on  
19 an interstate highway in South Carolina, the  
20 upstate area of South Carolina, and the wreck  
21 involved the death of two highway patrolmen  
22 and I was asked to comment on Ms. Tackett's  
23 use of prescription medications as well as her  
24 daily use of THC through marijuana smoking.

25          Q.     So what about the second case,

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1 Vanzant versus Hill's Pet Nutrition; what was  
2 your role in that case?

3 A. As an expert reviewing the FDA  
4 processes that are involved when an item is  
5 approved for use as a prescription or  
6 over-the-counter item.

7 Q. And you were an expert witness in  
8 both of these cases, right?

9 A. Yes, I was.

10 Q. What was your expertise that you  
11 relied on for your opinions in those cases?

12 A. Okay. Pertaining to the case in  
13 South Carolina that involved the marijuana,  
14 for 30 years I've been involved with the Food  
15 and Drug Administration evaluating adverse  
16 drug reactions and adverse drug experiences.

17 When I was at the University of  
18 Mississippi, we received a grant from the Food  
19 and Drug Administration to develop an online  
20 ADR reporting, adverse drug reaction reporting  
21 system, and as a result of that, I've been  
22 asked to serve on numerous FDA committees.  
23 Currently I serve on two. One is the  
24 Non-Prescription Drug Advisory Committee and  
25 the other is the Psychotropic Medication

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1 Advisory Committee. And based upon my  
2 experience and work with adverse drug  
3 reactions related to prescription medications  
4 as well as, in this case, THC, I was retained  
5 as an expert witness.

6 For the second case dealing with  
7 Hill's Pet Food -- and there was a case in  
8 Illinois, there was also a case in California.  
9 And this was based upon my experience with the  
10 Food and Drug Administration as a reviewer of  
11 grants in the past that have been submitted by  
12 academic researchers as well as my service on  
13 the two committees that I just previously  
14 mentioned. I was retained because of my -- my  
15 knowledge and expertise pertaining to the Food  
16 and Drug Administration processes,  
17 regulations, those kinds of things.

18 Q. Now, did any of the expertise  
19 required in either of those cases inform your  
20 opinion in this case?

21 A. I think that I rely upon my  
22 experience over the course of my career  
23 pertaining to lots of issues related to  
24 medications, medication use, medication  
25 misuse, so, most assuredly, I reviewed, for

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1 example, what the Drug Enforcement  
2 Administration views as THC and the impacts of  
3 marijuana as a Schedule I drug, and certainly  
4 with the FDA looking at various types of  
5 things pertaining to prescription medications,  
6 over-the-counter medications, whether it's for  
7 human use or animal use.

8 Q. Any other cases where you have  
9 been retained as an expert witness?

10 A. There have been numerous cases  
11 since the late 1990s.

12 Q. And what was your area of  
13 expertise in forming your opinions in those  
14 cases?

15 A. Again, it was related to adverse  
16 drug reactions and the impacts of medications,  
17 either positively or negative, upon health  
18 outcomes.

19 Q. Can you explain your area of  
20 expertise as it pertains to your work in this  
21 case?

22 A. Okay. It pertains to several  
23 things.

24 First of all, my professional  
25 experience as a licensed pharmacist since

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1       1975, and I'm continuously practicing my  
2       profession each and every year. So it's based  
3       upon my experience as a pharmacist both in an  
4       independent community setting as well as a  
5       chain community setting, institutional  
6       practice, and long-term care practice. So  
7       that's -- that's one component.

8                   And, secondly, it relates to  
9       adverse effects that pertain to the misuse of  
10      medications, perhaps inappropriate  
11      prescribing, inappropriate dispensing, those  
12      kinds of things, the work environment of  
13      pharmacists and pharmacies and how that  
14      impacts patient safety.

15                  So all those factors have been  
16      part of my career since the 1980s.

17                  Q.       What chain pharmacy do you have  
18      experience with?

19                  A.       At that point in time, it was a  
20      Rite Aid pharmacy in greater Atlanta. Robert  
21      Thompson was the district manager for that  
22      area and I practiced as a relief pharmacist on  
23      weekends while I was a faculty member at the  
24      University of Georgia College of Pharmacy.

25                  Q.       What was the time period for that?

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1           A.       It would have been 1986 to 1989.  
2                         One thing that I neglected to  
3 mention, based upon your question -- excuse me  
4 for going back, but it relates to survey  
5 research and questionnaire design and  
6 development. And since the 1980s and my  
7 graduate school education at the University of  
8 Minnesota, I've been heavily involved in what  
9 is termed field research. It's not bench  
10 science, it's not lab research, but it's field  
11 research, patients in the -- in the healthcare  
12 setting environment.

13                     So I've been involved with surveys  
14 and surveying patients, surveying  
15 practitioners since the 1980s. So it's almost  
16 45 years at this point in time. I'm familiar,  
17 through my training as well as expertise and  
18 experience, in survey design and questionnaire  
19 construction.

20           Q.       Have you ever worked with any  
21 survey research organizations?

22           A.       No, I have not.

23           Q.       Have you ever authored any books  
24 about survey research methods?

25           A.       Did you say books? I'm sorry.

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1           Q.       Yes, books.

2           A.       Yes. Several books that I have  
3 authored, "Pharmacy and the U.S. Health Care  
4 System" -- that's in its fourth edition right  
5 now -- when dealing with pharmacists and  
6 patient care issues, I deal in that book with  
7 survey research and survey methodology.

8                   There's another book that was  
9 published in 2007, "Patient Compliance Issues  
10 and Opportunities," where I talk about how you  
11 can assess patient compliance through survey  
12 research and methodology.

13           Q.       How many surveys have you been  
14 asked to design?

15                   MR. ELSNER: Objection.

16                   You can answer if you know.

17           A.       I have published 70 papers dealing  
18 with survey research, survey methodology, and  
19 the outcomes of the research that I have  
20 conducted. Over and above those 70, I'm  
21 involved -- I've been involved in probably 200  
22 survey design and implementation processes.

23           Q.       When you say there's 70 where you  
24 were dealing with survey research, did you  
25 design the surveys that were involved in those

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1 research projects?

2 A. Yes. Each and every one of those  
3 were designed by me with prior research and  
4 examination of what the topic was, how it  
5 should be addressed, and what the outcomes of  
6 that research should be.

7 Q. Have you ever designed a survey  
8 with real world benchmarks? And do you know  
9 what I mean by that?

10 A. Could you please elaborate what  
11 you mean by real world benchmarks?

12 Q. Where you were predicting behavior  
13 and then you are actually able to see what  
14 happened and compare what -- your predictions  
15 from the survey with what actually happened.

16 A. Yes. I've done that numerous  
17 times.

18 Q. Can you give me some examples?

19 A. I sure can.

20 Patient compliance with  
21 medications, patient non-compliance with  
22 medications, adverse drug reactions pertaining  
23 to the use of medications, the use of tobacco  
24 and tobacco cessation methods and methodology,  
25 those types of things.

Page 22

1           Q.     And in those instances you're able  
2     to take the real world outcomes and compare  
3     them with the outcomes of the survey?

4           A.     That's correct, yes. They were,  
5     in fact, predictive-type studies for the most  
6     part, but I also did field research studies  
7     just assessing what general framework and  
8     general components might be of the healthcare  
9     system.

10          Q.     And those surveys that you  
11     designed that had the real world benchmarks,  
12     did you find that the results of your survey  
13     accurately predicted what actually happened?

14           MR. ELSNER: Objection.

15           You can answer.

16          A.     That's -- that's going to be an  
17     answer that I have to respond to with 70  
18     papers. In some cases the predictions were  
19     right on the money, some cases they weren't.  
20     Regardless of what the outcome was, I  
21     published the results. I wasn't trying to  
22     seek answer A, B or C. I was trying to give  
23     what an ethical outcome assessment was without  
24     any type of bias involved.

25          Q.     Have you ever personally created

Page 23

1 or administered a survey for pharmacists or  
2 pharmacy staff members?

3 A. Yes, I have, numerous times.

4 Q. And what are the nature of those  
5 surveys?

6 A. They were asking about their  
7 interactions with patients, asking about their  
8 satisfaction with their work environment. So  
9 I've done that with pharmacists. I've also  
10 done it with physician assistants as well as  
11 individuals that work within a managed care  
12 environment.

13 MS. WOHL: And I should have asked  
14 before we started, but did you all get the box  
15 of exhibits that I sent? There were only  
16 three.

17 MR. ELSNER: Yes.

18 Q. If you don't mind taking those out  
19 at this point. One of those should be your  
20 report, and I just want to make sure that this  
21 is the report that you authored and I have the  
22 right one.

23 MR. ELSNER: Are you talking about  
24 tab 2 in the binder?

25 MS. WOHL: Yeah. I'm not super

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1 familiar with the tabs, but --

2 THE WITNESS: I do have part of my  
3 report in tab 2. It does not list my  
4 curriculum vitae, which was Exhibit 1 of that  
5 document.

6 MS. WOHL: Understood. I'm going  
7 to make this Exhibit 1 to the deposition.

8 - - - - -

9 (Thereupon, Deposition Exhibit 1,  
10 Expert Report of Jack E. Fincham,  
11 Ph.D., R.Ph., was marked for  
12 purposes of identification.)

13 - - - - -

14 Q. And if you could look at the  
15 bottom of page 1, starting with the last  
16 sentence and ending on page 2 of your report,  
17 you state that in your pharmacy and public  
18 health classes you taught research methods --  
19 research design and methods courses that  
20 involved research design, focusing on survey  
21 research and questionnaire design. Is that a  
22 fair summary?

23 A. Yes, it is.

24 Q. Do you remember any of the  
25 materials you created for those courses that

Page 25

1       addressed survey research and questionnaire  
2       design?

3                    MR. ELSNER: Objection.

4                    You can answer.

5        A.       I have thousands of pages of  
6       reference materials that I utilized in  
7       developing these courses. I constantly made  
8       sure that the data that I was presenting was  
9       up to date and current, so I used literature  
10      sources, I used textbook sources, and I used  
11      examples of poorly designed questionnaires and  
12      surveys.

13       Q.       Do you know roughly how many of  
14      these college courses and, I guess, Master's  
15      courses that you taught specifically covered  
16      survey research and questionnaire design as  
17      part of the course curriculum?

18                    MR. ELSNER: Objection.

19        A.       15 courses in four major colleges  
20      and universities in the United States.

21       Q.       Are you currently teaching?

22       A.       Yes, I am.

23       Q.       And when was the last time you  
24      taught a class that integrated survey research  
25      and questionnaire design into the course

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1 curriculum?

2 A. It would have been two years ago.

3 Q. And we talked about this a second  
4 ago. On page 2 of your report you mention  
5 that 70 of your 255 papers published in  
6 medical journals have been the result of  
7 questionnaire and survey research. How did  
8 you calculate that total of 70 for this  
9 statement?

10 A. Basically just counted the number  
11 in that 200 -- it's not 260, but 255 published  
12 papers that dealt with questionnaire research,  
13 design and survey methodology. I just simply  
14 went through and numbered them.

15 Q. Are each of these papers  
16 integrating the results of questionnaires and  
17 surveys?

18 A. Yes, they are.

19 Q. Of different -- are each of them  
20 about a different survey?

21 MR. ELSNER: Objection.

22 You can answer.

23 A. I don't have total recall of the  
24 entire components of each of these 70. Some  
25 of these were papers that were an additional

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1 paper based upon a previously published study  
2 that I did that looked at a survey and survey  
3 methodology. But I would say of the 70, 65 of  
4 them I would estimate -- that's just an  
5 estimate, please -- 65 would be independent  
6 and mutually exclusive based upon the other  
7 65.

8 Q. In any of these publications did  
9 you analyze the intent of the person or  
10 organization conducting the survey or  
11 questionnaire?

12 A. I was the one that was doing the  
13 conducting of the survey, so I thoroughly  
14 analyzed what I was doing, why I was doing it,  
15 and what the results were to be used for.

16 Q. In any of your other publications  
17 have you analyzed the intent of the purpose --  
18 of the person or organization conducting the  
19 survey or questionnaire?

20 A. Yes, I have.

21 Q. Do you recall any specific  
22 examples?

23 A. I'd have to go through those  
24 250-some papers to tell you which ones. I  
25 don't have it at the tip of my tongue.

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1           Q.       Are you currently a practicing  
2       pharmacist?

3           A.       Yes, I am. I'm licensed to  
4       practice in the state of Colorado, and because  
5       the federal government does not require a  
6       specific license other than a state license,  
7       I'm able to do things within a federal  
8       capacity if and when I need to do so. I'm  
9       currently a volunteer with the Medical  
10      Research Corps of Southern Arizona, and in  
11      that capacity they allow me to use my Colorado  
12      pharmacy license to practice at certain  
13      components within areas where I am.

14           Q.       And when you're not in that  
15      federal capacity -- I'm sorry. Can you  
16      explain the federal capacity practicing to me?

17           A.       All right. The federal government  
18      does not require that you have a pharmacy  
19      license within a federal government component  
20      agency. So if you work within the VA system  
21      or you work as a volunteer in some type of a  
22      federal organization, you just have to have a  
23      state pharmacy license. It doesn't matter  
24      what that state is or where that state is. It  
25      might be -- in my case I live in Arizona but

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1 the state where I am licensed is the state of  
2 Colorado.

3 Q. And you mentioned an organization  
4 that you volunteer with. What is that?

5 A. It's the Medical Reserve Corps of  
6 Southern Arizona, and this is an organization  
7 made up of nurses, pharmacists, physicians,  
8 nurse practitioners, physician assistants that  
9 provide care and services in a community  
10 outreach type of setting.

11 Q. And you practice pharmacy in  
12 connection with that organization?

13 A. Yes, I did.

14 Can I elaborate with a specific  
15 example --

16 Q. Yes.

17 A. -- please? Okay.

18 During the initiation of the COVID  
19 vaccination process in Tucson, Arizona, one of  
20 the major metropolitan healthcare hospitals in  
21 Tucson, the Tucson Medical Center, set up what  
22 was called a drive-thru vaccination clinic,  
23 and they sought volunteers that had experience  
24 in vaccine preparation, vaccine administration  
25 that were credentialed in order to provide

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1 vaccinations, and so I volunteered through the  
2 Tucson Medical Center drive-thru COVID  
3 vaccination process for six months. I  
4 prepared individually 15,000 COVID  
5 vaccinations for administration. So I worked  
6 three days a week eight hours a day for those  
7 three days to provide the preparation of those  
8 vaccinations, administer those vaccinations,  
9 and oversee the process to make sure that  
10 sterile practicing was provided and that clean  
11 and accurate administration was occurring.

12 Q. And this was in Arizona?

13 A. It was in Tucson, Arizona at the  
14 Tucson Medical Center.

15 Q. And where do you practice in the  
16 state of Colorado, if you do?

17 A. I have a license in the state of  
18 Colorado. I haven't practiced in Colorado  
19 since we left Colorado for me to pursue  
20 graduate studies at the University of  
21 Minnesota in 1980, but I've been licensed for  
22 48 years in the state of Colorado.

23 Q. And other than your work with the  
24 COVID vaccines, when was the last time you  
25 dispensed medication as a pharmacist?

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1           A.       That was it.

2           Q.       And did you -- when you were  
3 practicing as a pharmacist, were you  
4 practicing -- you mentioned some experience  
5 with Rite Aid. Did you have other experience  
6 in a pharmacy?

7           A.       Yes, I did.

8                   MR. ELSNER: Objection.

9                   Just give me one second.

10                  Just object to the form.

11                  Go ahead.

12                  A.       Upon graduation from pharmacy  
13 school in 1975, we moved to western Colorado,  
14 a city called Montrose, and at that -- in  
15 Montrose I was a part-owner of a community  
16 pharmacy and I was the pharmacist manager for  
17 that pharmacy for five years. And I also  
18 practiced in a long-term care facility as a  
19 consultant pharmacist for three nursing homes  
20 in the Montrose County area. So that's as an  
21 independent pharmacy owner, pharmacy manager,  
22 and practitioner.

23                  Q.       And in your experience in the  
24 independent pharmacy and the chain pharmacy,  
25 did you dispense opioid medications?

1           A.       I certainly did, yes.

2           Q.       And I take it the last time you  
3 did that would have been in the 1980s? Did  
4 you say 1980 is the last year you practiced?

5           MR. ELSNER: Objection.

6           Go ahead.

7           A.       It would have been in the 1990s,  
8 late 1990s. What I tried to do when I started  
9 my academic career was each and every summer  
10 or break period I wanted to work in a pharmacy  
11 setting so I could keep current with what the  
12 demands, current environment and practice  
13 components might be, so I did that religiously  
14 throughout my academic career.

15          Q.       So you practiced in a pharmacy  
16 every summer. What were the years that you  
17 did that?

18          A.       Okay. That would have been  
19 through 2004, and then from 2004 until my  
20 academic retirement, at least as a full  
21 professor, in 2018, I would spend time in  
22 pharmacies each and every year, whether it was  
23 an independent, a chain or a community  
24 pharmacy, to just see what was going on, how  
25 it was being done, what some impacts might be

1       upon the pharmacists.

2           Q.     So during those summers where you  
3        were spending time in a pharmacy until 2004,  
4        were you dispensing medication?

5           A.     I was observing the dispensing. I  
6        wasn't doing the actual dispensing myself.

7           Q.     Okay. And then between 2004 and  
8        2018, when you were spending time in  
9        pharmacies, were you dispensing medication?

10          A.     No.

11          Q.     Are you still practicing  
12        pharmacy -- are you a practicing pharmacist  
13        right now?

14          A.     I consider myself to be a  
15        pharmacist, and my current practice is I  
16        provide medication-related coursework for  
17        senior citizens through what's called the  
18        University of Arizona OSHER, O-S-H-E-R,  
19        Life-Long Learning Program. I've done five  
20        courses with that component. I also interact  
21        with faculty and students at the University of  
22        Arizona College of Pharmacy. In that capacity  
23        I consider myself to be a practicing  
24        pharmacist in how I perform my duties and  
25        interactions with those individuals.

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1           Q.     But since you were giving out  
2 COVID vaccines, have you dispensed medication  
3 at a pharmacy or given vaccines at a pharmacy  
4 setting?

5           A.     No, I have not.

6           Q.     Have you done anything in a  
7 pharmacy setting since your work with the  
8 Medical Reserve Corps in southern Arizona?

9           A.     Well, I'm still with the Medical  
10 Reserve Corps, but recently I have not, no.

11          Q.     And when was the last time you did  
12 work with them?

13          A.     It would have been 2022.

14          Q.     And have you ever served as an  
15 expert witness in a case that concerned opioid  
16 dispensing?

17          A.     Yes.

18          Q.     Which one was that?

19          A.     This was a case in Little Rock,  
20 Arkansas, and it was a case involving the  
21 misprescribing and administration of a  
22 fentanyl dose to an infant child in the  
23 medical center in Little Rock, Arkansas, and  
24 the baby passed away and I was brought in to  
25 speak to fentanyl administration, prescribing

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1 and dosing for pediatric populations.

2 Q. And did you offer an opinion in  
3 that case?

4 A. Yes, I did.

5 Q. Can you tell me the nature of that  
6 opinion?

7 A. The nature was that this was a  
8 misprescribed fentanyl dose on the part of the  
9 physician, and it -- it should not have been  
10 dispensed by the pharmacy for administration  
11 to the patient because of the problems  
12 associated with how this dosing was calculated  
13 and was to be administered.

14 Q. Do you recall the pharmacy that  
15 dispensed this medication?

16 A. It was the medical center pharmacy  
17 in Little Rock, Arkansas.

18 Q. In your experience as an expert  
19 witness, what kind of work have you done on  
20 pharmacy practices and standards of care?

21 MR. ELSNER: Objection.

22 Go ahead.

23 A. There have been several cases that  
24 involved pharmacy errors, misdispensing of  
25 medications to patients, the wrong drug for

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1       the wrong patient at the wrong time, and I was  
2       asked to provide input on what that was and  
3       what the problems were in that dispensing and  
4       administration process.

5           Q.       Anything else?

6           MR. ELSNER: Objection.

7                   Go ahead.

8           A.       No.

9           Q.       Have you ever been qualified as an  
10      expert by a court?

11       A.       Yes, I have.

12       Q.       In which cases?

13       A.       I don't have the number of cases  
14      at the tip of my tongue, but this goes back to  
15      1996, and since 1996 through the present  
16      there's probably been 20 to 25 cases that I've  
17      been involved with and approved as an expert  
18      witness.

19       Q.       Have you ever been proffered as an  
20      expert witness but not qualified?

21       A.       No, I have not.

22       Q.       Has a court ever limited your  
23      testimony?

24       A.       No, they have not.

25       Q.       Are you familiar with the 2022 CDC

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1 guidelines for prescribing opioids for pain?

2 A. Yes, I am. I'm very familiar with  
3 those guidelines. I use those materials in  
4 coursework that I present to doctor and  
5 pharmacy students at several universities and  
6 colleges of pharmacy in the United States.

7 Q. Do you agree with the current  
8 guidelines?

9 MR. ELSNER: Objection.

10 A. I can see where these guidelines  
11 were important, why they were important, why  
12 they need to be followed and how they can be  
13 used by pharmacy practitioners in a practice  
14 setting.

15 Q. Is there anything in the current  
16 guidelines that you don't agree with?

17 MR. ELSNER: Objection.

18 A. No, I do not.

19 Q. Sorry. You do not what?

20 A. I do not disagree with any of the  
21 current guidelines.

22 And just as a point of reference,  
23 I was the first pharmacy faculty member in the  
24 United States across the country to utilize  
25 these guidelines in coursework in colleges of

1       pharmacy in the pharmacy schools.

2           Q.     Turning to your report and the  
3       Ohio Board of Pharmacy surveys, the Ohio Board  
4       of Pharmacy repeatedly said that the 2020 and  
5       2021 surveys were about working conditions; is  
6       that right?

7           MR. ELSNER: Objection.

8           A.     In my estimation, respectfully,  
9       please, that's a very limited view of what  
10      they were looking at.

11          Q.     Okay. Is it your opinion that  
12      these surveys were about opioids?

13          A.     I'm sorry. I didn't understand  
14      your question.

15          Q.     Is it your opinion that these Ohio  
16      Board of Pharmacy surveys were about opioids?

17          A.     They included components that  
18      certainly embraced the problems associated  
19      with opioid dispensing.

20          Q.     On page 5, if you could turn there  
21      with me, of your report, at the beginning of  
22      the last paragraph you write, "Over the last  
23      20 years, there has been growing concern among  
24      pharmacists, boards of pharmacy and trade  
25      associations related to working conditions in

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1           retail chain and grocery store pharmacies."

2                          Do you see that?

3           A.       Yes, I do.

4           Q.       And what complaints are you  
5 referring to in this instance?

6           A.       Because state pharmacy boards are  
7 public entities, they produce documents that  
8 show what complaints have been made, by whom,  
9 how many, those kinds of things, so that's  
10 where that construct comes from.

11          Q.       Are you referring to any specific  
12 complaints that you recall here?

13          A.       There have been numerous  
14 complaints in each of the 50 states related to  
15 this issue.

16          Q.       Have you reviewed complaints to  
17 the state board of pharmacies in every -- each  
18 of the 50 states?

19          A.       No, I have not.

20          Q.       Do you recall any specifically  
21 about Kroger?

22                          MR. ELSNER: Objection.

23          A.       I'm not sure what -- if what I'm  
24 going to answer is necessarily considered,  
25 quote, unquote, complaint, but rulings and

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1       findings from court cases have indicated such  
2       problems with dispensing of opioids in Kroger  
3       pharmacies.

4           Q.     And what rulings and findings are  
5       you talking about?

6           A.     Well, specifically in the state  
7       where you're located this morning, West  
8       Virginia settled with Kroger for 68 million  
9       dollars.

10          Q.     And you would consider that a  
11       ruling or a finding by a court?

12          A.     Yes, I would.

13          Q.     In what way?

14          A.     Well, I'm not an attorney, okay,  
15       but when I see a settlement that's 68 million  
16       dollars that Kroger paid, then that indicates  
17       to me that it was a settlement.

18          Q.     I agree with you that it was a  
19       settlement. Does that settlement influence  
20       your opinions -- does that settlement  
21       influence your opinions in this case?

22                   MR. ELSNER: Objection.

23          A.     I looked at this particular case  
24       that we're talking about this morning as an  
25       independent viewer of what the particular

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1 situation was without trying to weigh in any  
2 other factors from any other cases.

3 Q. So when you wrote this sentence,  
4 though, what -- I believe you just told me  
5 there were numerous rulings and findings  
6 pertaining to Kroger specifically. What are  
7 you referring to when you said that?

8 A. Okay. The association that  
9 monitors each and every one of the 50 boards  
10 of pharmacy in the United States is the  
11 National Association of Boards of Pharmacy.  
12 And NABP, again, it's a public entity and they  
13 have reported findings, other types of things  
14 pertinent to what I was writing in this  
15 particular paragraph.

16 Q. And specific to Kroger?

17 A. I don't know specifically if  
18 Kroger was identified, but large chain  
19 community settings, which obviously includes  
20 Kroger, would have been involved.

21 Q. You also mention in this paragraph  
22 DEA cases that have warned about pharmacies  
23 utilizing metrics and other incentives.

24 Do you see that?

25 A. Yes, I do.

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1           Q.       Which DEA cases are you referring  
2 to?

3           A.       I'm not sure if I can identify a  
4 specific case.

5           Q.       Any of them dealing with Kroger?

6           MR. ELSNER: Objection.

7           A.       I can't recall that off the top of  
8 my head.

9           Q.       On page 8 of your report, the last  
10 paragraph that starts out, "Organizations  
11 conduct different types of surveys," the  
12 second sentence there states that, "The Ohio  
13 Board of Pharmacy conducted its surveys to  
14 gather information about existing workload  
15 conditions that required further study, and  
16 not necessarily to understand what all Ohio  
17 pharmacists believe."

18                  Can you explain that sentence to  
19 me?

20           A.       Yes. I certainly can try. It  
21 goes back to what the particular survey was  
22 supposed to be doing, okay. And when you  
23 construct a survey, you consider what is it  
24 that you're trying to examine, how are you  
25 going to examine it, and what are you going to

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1 use the results of that process or that  
2 research to do. And if you look at the study  
3 that we're talking about in the state of Ohio  
4 with workload conditions, it wasn't trying to  
5 predict anything, it wasn't trying to estimate  
6 what something might be. It was just simply  
7 understanding component field research to try  
8 to look at what the general working conditions  
9 were as stated by pharmacists that were  
10 licensed to practice pharmacy in the state of  
11 Ohio. It wasn't trying to predict anything.  
12 It was just to get a general sense of what the  
13 state of practice components might be affected  
14 by workplace environments.

15 Q. Is it your opinion that this --  
16 these surveys were not -- let me rephrase  
17 that.

18 Is it your opinion that it was not  
19 the purpose of the surveys to understand what  
20 all Ohio pharmacists believed?

21 MR. ELSNER: Objection.

22 A. You couldn't conduct a survey to  
23 analyze what all pharmacists consider. This  
24 was just to try to get a general sense of  
25 workplace conditions that impacted patient

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1 safety in the practice of pharmacy in these  
2 settings in Ohio.

3 Q. On page 10 of your report -- if  
4 you could flip there -- you talk about the  
5 response rate, and the last sentence of that  
6 top paragraph says, "In my opinion the  
7 response rates for pharmacists responding to  
8 the 2020 and 2021 survey was adequate and  
9 appropriate."

10 What do you mean by adequate and  
11 appropriate here?

12 A. And, again, what all this goes  
13 back to is what the purpose of this survey was  
14 for, okay. And it wasn't to try to predict  
15 anything. It wasn't trying to estimate  
16 anything other than what the working  
17 conditions were in the state of Ohio for  
18 pharmacists in the two years that this study  
19 was conducted.

20 And if you look at the response  
21 rate that you see in this study, it's very  
22 similar to the response rates that you could  
23 see in other state surveys, West Virginia,  
24 Missouri, as well as national surveys that  
25 were conducted by the American Association of

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1 Pharmacists, the APhA studies, that looked at  
2 workload conditions, working conditions,  
3 working environment, and if you consider the  
4 response rate in these Ohio studies with those  
5 other studies that I just referenced, it's  
6 very, very similar, if not the same.

7 Q. You referenced three just now  
8 surveys, in West Virginia, Missouri and  
9 national. When was there a West Virginia  
10 Board of Pharmacy survey conducted?

11 A. I do not recall.

12 Q. Do you recall what the response  
13 rate in that survey was?

14 A. It was very similar. I can't give  
15 you the exact specificity of what the response  
16 rate was, but it was very similar as far as  
17 the percentage of respondents.

18 Q. What was the West Virginia survey  
19 about?

20 A. Workload conditions in pharmacies.

21 Q. And I looked through your  
22 materials considered in your report and I'm  
23 not sure I saw a West Virginia Board of  
24 Pharmacy survey. Do you think -- is that in  
25 there? Is that something you considered?

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1           A.     It's not something I considered.  
2     I just know that they did a study and I looked  
3     at the results but I didn't include it in the  
4     paper that I -- or the report I presented and  
5     prepared.

6           Q.     Okay. So you believe there is a  
7     study done but you're not sure when; is that  
8     right?

9           A.     That's correct.

10          Q.     And you don't know the response  
11       rate but you believe it was about 20 percent?

12          A.     It was more than that. I can't  
13       tell you exact percentage.

14          Q.     Do you know how much more than the  
15       Ohio survey response rate it was?

16                    MR. ELSNER: Objection.

17          A.     No, I do not.

18          Q.     Now, the Missouri survey, that's  
19       what you supplemented your report with  
20       recently; is that right?

21          A.     That's correct.

22                    MR. ELSNER: That's not true,  
23       actually, counsel.

24                    MS. WOHL: I'm sorry. That was  
25       Oregon. Okay. My mistake.

1 Q. Do you recall the year that the  
2 Missouri Board of Pharmacy did a survey of  
3 workload conditions?

4           A.       I can't give you the exact date,  
5   but I think it was around 2014.

6 Q. Was this part of your materials  
7 considered?

8 A. Yes, it was.

9 Q. And do you recall the response  
10 rate in the Missouri Board of Pharmacy survey?

11                   A.       If you could give me a minute, I  
12 could go to the exact spot and tell you.

13 Q. Okay.

14 A. It's footnote 117. I have to look  
15 at the exhibit to tell you what the date of  
16 that survey was precisely.

17 Q. Okay. Do you recall the response  
18 rate in the Missouri Board of Pharmacy survey?

19 MR. ELSNER: Objection.

20 Q. I'm sorry. That's what I just  
21 asked you, isn't it?

22                       Okay. And you also cited to a  
23 national pharmacy workload survey?

24 A. Yes.

25 O. And do you recall the year that

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1 the national survey was done?

2 A. Again, I'd have to go to the  
3 footnotes to pull up the exact date. I don't  
4 recall what the date was. The Missouri Board  
5 of Pharmacy survey was 2019. That's on page  
6 27, first paragraph, halfway down the page.

7 Q. Can you recall the response rate  
8 of the national board -- or the national  
9 pharmacy survey?

10 A. It was in the range of the 20  
11 percentile. I can't tell you exact amount.

12 Q. Were there any other surveys that  
13 you're referring to in this sentence on page  
14 10?

15 A. On page 10?

16 Q. Yes, about similar surveys.

17 MR. ELSNER: Objection.

18 A. Where specifically on page 10 are  
19 you referencing?

20 Q. It's the last sentence on that  
21 first paragraph, "Similar surveys assessing  
22 the status of work environment for  
23 pharmacists."

24 A. Those are the ones that I'm  
25 referring to.

1           Q.     Okay.  Do you agree that survey  
2 response rates are a factor to consider in  
3 determining the quality and validity of a  
4 survey's results?

5           A.     I can't agree with that statement  
6 as you stated it.

7           Q.     Would a higher response rate to  
8 the Ohio Board of Pharmacy surveys have  
9 yielded results that more accurately reflected  
10 the opinions of all pharmacists in the state  
11 of Ohio?

12           MR. ELSNER: Objection.

13           A.     I can't answer that question  
14 without elaborating.

15           Q.     In your opinion, do the Ohio Board  
16 of Pharmacy surveys represent accurate  
17 cross-sections of the Ohio pharmacists at the  
18 time?

19           A.     That was not the purpose of the  
20 study, to do that particular thing that you're  
21 pointing out.

22           Q.     Regardless of a purpose, is it  
23 your opinion that the surveys do represent  
24 accurate cross-sections of all Ohio  
25 pharmacists at the time?

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1 MR. ELSNER: Objection.

2 A. I can't agree with your premise  
3 statement.

4 Q. Are you familiar with the concept  
5 of weighted data in surveys?

6 A. Yes, I am.

7 Q. Can you explain that to me?

8 A. Okay. That is a particular type  
9 of study that's disparately different than  
10 this survey and the intent of this survey. A  
11 weighted data survey would look at a survey  
12 that was conducted to do some type of a  
13 prediction and some type of an assessment from  
14 a statistical point of view of the validity of  
15 the data that was collected, and it might  
16 include any number of factors that include  
17 demographics, other types of things that you  
18 can weigh in and use to assess whether or not  
19 what you found is accurately representing what  
20 it is that you wanted to find. That's not the  
21 purpose at all in any way, shape or form of  
22 what the Ohio surveys were intended to do. It  
23 wasn't to be predictive, it wasn't to have any  
24 kind of a statistical component associated  
25 with it other than to look at the general

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1 workplace conditions that impacted patient  
2 safety in pharmacies in the state of Ohio.

3 Q. You repeated this a couple times.  
4 I want to make sure I've got this right. The  
5 Ohio Board of Pharmacy surveys were not meant  
6 to represent the Ohio pharmacists at large?

7 MR. ELSNER: Objection.

8 A. You have to look at specifically  
9 why these studies were conducted. They were  
10 conducted to look at general work conditions  
11 as perceived by pharmacists that responded to  
12 the survey. It wasn't trying to predict  
13 anything. It was simply trying to assess what  
14 the current situation was and factors that  
15 impacted pharmacists and their ability to  
16 practice pharmacy.

17 Q. So, again, they were not meant to  
18 represent the thoughts and feelings and  
19 conditions of all Ohio pharmacists, correct?

20 A. That was not the purpose of the  
21 study, no.

22 Q. So when you say the purpose of the  
23 study was to understand general working  
24 conditions of pharmacists, do you mean that it  
25 was general working conditions of only the

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1 pharmacists who responded to the survey?

2 MR. ELSNER: Objection.

3 A. I can't agree with that statement.

4 Q. Why not?

5 A. Because that wasn't the purpose of  
6 the study. The purpose of the study was to  
7 get a general assessment of workplace  
8 conditions as perceived by pharmacists that  
9 responded to the surveys.

10 Q. So the assessment of workplace  
11 conditions that the Ohio Board of Pharmacy got  
12 out of this survey is limited to the  
13 perceptions of the pharmacists who responded;  
14 is that a correct statement?

15 MR. ELSNER: Objection.

16 A. I can't agree with that statement.

17 Q. Why not?

18 A. The use of the term "limited" is  
19 confusing. I think that you have to look at  
20 the results that were found as they were  
21 presented, both the Likert scale items with  
22 the numerical value associated with them, a  
23 percentage value associated with them, as well  
24 as the verbal comments.

25 Q. When you say you have to look at

1 those, are you expressing that's why you can't  
2 agree with that statement about the general  
3 assessment?

4           A. Could you please repeat your  
5 question in its entirety?

6 MS. WOHL: Could I have the court  
7 reporter read that question back?

8 (Recess had.)

Q. That was the question. Thank you.

10           A.       The purpose of the study was to  
11       get an assessment of pharmacists' perception  
12       of workplace conditions, and that's what they  
13       responded to both in their Likert scale items  
14       as well as their verbal responses.

15 THE WITNESS: Would it be possible  
16 to take a break, please?

17 MS. WOHL: Yes. Why don't we take  
18 a ten-minute break.

19 THE VIDEOGRAPHER: Going off the  
20 record. 10:55.

21 (Recess had.)

22 THE VIDEOGRAPHER: On the record,  
23 11:07.

24 BY MS. WOHL:

25 Q. Dr. Fincham, I want to go back to

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1 the questions that we left off on and make  
2 sure I understand what you're saying here.

3 You said a few times that the  
4 purpose of the survey was to get a sense of  
5 the general working conditions at Ohio  
6 pharmacies; is that correct?

7 A. Yes.

8 Q. But do you agree with me that the  
9 workplace conditions of the survey gives you a  
10 sense of the conditions of the pharmacists who  
11 responded? Do you agree with that?

12 MR. ELSNER: Objection.

13 A. I think that you can take that at  
14 face value, but you also have to realize that  
15 there were data points that were collected,  
16 but based upon how many years of experience  
17 somebody had, where their practice site was,  
18 whether it was in an institutional setting, an  
19 independent setting, a large chain setting, a  
20 food market-based pharmacy. Those types of  
21 demographic information items were collected.

22 Q. Are you saying that because they  
23 collected those demographic data information,  
24 you can tell from the responses about  
25 workplace conditions of pharmacists who did

1 not respond to the survey?

2 A. You can't predict what somebody  
3 didn't respond to, but what you can look at is  
4 what was stated by those that did make an  
5 opinion stated either through the Likert scale  
6 responses or the verbal responses.

7 Q. I think we agree on that point.

8 Dr. Fincham, you also talked about  
9 the West Virginia settlement, and I want to go  
10 back to that.

11 Where did you learn about the  
12 Kroger settlement in West Virginia?

13 A. Ms. Wohl, it was just simply an  
14 online assessment of other lawsuits that have  
15 been brought against various chain pharmacies,  
16 and I just saw that online as a settlement  
17 that was reached in the state of West Virginia  
18 versus Kroger.

19 Q. And does that settlement support  
20 any of the opinions that you've made in this  
21 report?

22 MR. ELSNER: Objection.

23 A. Ms. Wohl, I did not even consider  
24 that report or that finding in the report that  
25 I presented that we're looking at this

1 morning.

2 Q. Do you believe that, you know,  
3 after the fact that it supports what you've  
4 said in your report?

5 MR. ELSNER: Objection.

6 A. Again, I didn't look at that  
7 report in its entirety. I just simply saw the  
8 dollar value and left it at that. I didn't  
9 pursue it any further.

10 Q. Does it have any relevance to your  
11 opinions in this report?

12 A. I'd have to look at what it is  
13 that was stated in that document to see  
14 whether or not that it supported or didn't  
15 support what it is that I wrote. In my mind  
16 it's just not pertinent to what we were  
17 looking at here today.

18 Q. I'm going to ask you to look at  
19 what I think might be tab 1. It's an article  
20 you authored in 2008.

21 Do you see that?

22 A. Yes. I am there.

23 Q. This is going to be our Deposition  
24 Exhibit 2.

- - - - -

8 Q. Am I right about that? Is this a  
9 2008 article you authored for the American  
10 Journal of Pharmaceutical Education?

11               A.       Yes.   That was published at that  
12 point in time.   It's been referenced by other  
13 authors in refereed manuscripts over 1,500  
14 times.

15 Q. And you were the associate editor  
16 of the American Journal of Pharmaceutical  
17 Education at the time; is that right?

18                   A.        Yes.   For ten years I was in that  
19 capacity.

20 Q. And under the heading Expectations  
21 for Survey Response Rates, the first sentence  
22 is, "There are now higher expectations for  
23 survey response rates."

24 Do you see that?

25 A. Yes, I do.

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1           Q.       And you've got below that  
2        "Response rates approximating 60 percent for  
3        most research should be the goal of  
4        researchers," correct?

5           A.       That's correct.

6           Q.       And "For survey research intended  
7        to represent all schools and colleges of  
8        pharmacy, a response rate of 80 percent is  
9        expected"?

10          A.       Yes.

11          Q.       You've also got under the last  
12        full paragraph on that first page,  
13        "Non-response bias is a deadly blow to both  
14        the reliability and validity of survey study  
15        findings"; is that right?

16          A.       Yes.

17          Q.       So for the Ohio 2021 Board of  
18        Pharmacy pharmacists' workload survey, the  
19        response rate was somewhere around 20 percent,  
20        right?

21          A.       Yes.

22          Q.       And you believe that 20 percent is  
23        a sufficient response rate to prove the  
24        validity of that Ohio Board of Pharmacy  
25        survey; is that right?

1           A. I do based upon what the purposes  
2 of that study were. And if you look at this  
3 particular published paper that we're  
4 referencing right now, this was focused on  
5 academic researchers and schools and colleges  
6 of pharmacy throughout the United States and  
7 Canada that were publishing findings that were  
8 to be predicted within a certain percentage of  
9 what accurately might be assessed when you  
10 look at a survey and the survey data and the  
11 results.

12           So the types of studies that we're  
13 looking at in this particular paper, that I'm  
14 referencing in this paper, are night and day  
15 different from the survey that was conducted  
16 that was a field study in the state of Ohio.  
17 So the studies that are referenced here in  
18 this paper deal with specific predicting types  
19 of questionnaire items rather than assessing  
20 what the general framework of something might  
21 be.

22           So the studies that are published  
23 in the AJPE have to deal with predicting how  
24 students are going to respond to a particular  
25 course, how faculty are going to respond to a

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1       particular course. So you do a defined  
2       sample -- in some cases it's a weighted  
3       sampling process that then you can look at and  
4       see whether or not it was valid.

5                  One of the factors you look at is  
6       the response rate. That's not what you do  
7       with field studies that we're talking about  
8       with the State of Ohio surveys.

9                  Q.      Explain to me what a field study  
10      is, please.

11                 A.      A field study is conducted as a  
12      general assessment of what factors are in an  
13      environment, and we're looking, for example,  
14      in the state of Ohio, what the pharmacists'  
15      perception of their workplace conditions are.  
16      And some of the demographics that were  
17      obtained dealt with institutional practice,  
18      chain pharmacy, food market-based pharmacy, et  
19      cetera. So it wasn't trying to predict  
20      anything. It was trying to just see what the  
21      general field conditions were as perceived by  
22      pharmacists of their working conditions.

23                 Q.      In a field study like that is the  
24      response rate unimportant?

25                 A.      The response rate is not as

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1 important as it is in a statistically focused,  
2 parametrically designed study that looks at  
3 specific statistics and statistical analyses,  
4 et cetera.

5 Q. So in those studies a response  
6 rate of 60 to 80 percent is appropriate but in  
7 field studies you would aim for a response  
8 rate of 40 percent?

9 A. That's a general assessment that I  
10 would agree with, yes.

11 Q. And do you know whether similar  
12 experts in the survey field would agree with  
13 that assessment, that field study response  
14 rates should generally aim for a 20 percent  
15 figure there?

16 A. I can agree with that statement,  
17 and I can look at the researchers that did.  
18 For example, the APhA study, John Stomer from  
19 the University of Minnesota. He has published  
20 numerous papers that deal with field  
21 research-type topics. And looking at the  
22 response rates that we achieved here in Ohio  
23 versus what was achieved in the national study  
24 are very, very similar, and they're accepted,  
25 they're considered to be valid in their

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1 design, in their analysis.

2 Q. Responding to this Ohio Board of  
3 Pharmacy survey, this was voluntary; is that  
4 right?

5 A. That's correct.

6 Q. Doesn't the non-responsive rate at  
7 least raise a question of whether the  
8 pharmacists who chose to respond are different  
9 in some way than those who chose not to  
10 respond?

11 A. I can't agree with that.

12 Q. Why not?

13 A. Because what the pharmacists  
14 indicated in their Likert scale responses,  
15 their satisfaction, dissatisfaction, et  
16 cetera, were mirrored very closely in some of  
17 the items that were listed in the verbal or  
18 written responses that they provided. And the  
19 number of written responses in both the Ohio  
20 surveys was really very, very large. It's  
21 rare to have that many people respond as they  
22 did not only in the numbers that we're talking  
23 about but within the framework of each  
24 individual's response. Some of these were  
25 elaborately detailed paragraph after

1 paragraph.

2 Q. So what do those comments then,  
3 the details that you're talking about, tell  
4 you about the pharmacists who chose not to  
5 respond to the survey?

6 MR. ELSNER: Objection.

7 A. I can only tell you what the  
8 pharmacists that did respond verbalized, and  
9 the quality of the components of what they  
10 described was, to me as a pharmacist,  
11 disturbing. My blood boiled. It was  
12 absolutely disgraceful that pharmacists would  
13 be put in this type of environment and have to  
14 practice as they did with the constraints  
15 under which they practiced.

16 Q. So, to be clear, the responses  
17 that you reviewed, do they to you indicate any  
18 conditions or feelings that any of the Ohio  
19 pharmacists who did not choose to respond to  
20 the survey may have had?

21 MR. ELSNER: Objection.

22 A. I can only speak to what the  
23 responses were that I read.

24 Q. Thank you.

25 A. And as a pharmacist, I'm going to

1 reiterate, it was incredibly disturbing to see  
2 my profession treated as these respondents  
3 indicated that they had to practice, and the  
4 stresses, the strains, the absolute astounding  
5 negative conditions in which they were  
6 expected to take care of patients.

7 Q. Were these results surprising to  
8 you?

9 A. The results were not surprising  
10 because I have taught in schools of pharmacy  
11 about proper activities that pharmacists  
12 should be participating in that they need to  
13 be supervised with and for. It wasn't  
14 surprising that I saw it. What was surprising  
15 was the breadth and depth of the negative  
16 aspects of these individuals' practice  
17 environments. It was disturbing to me as a  
18 pharmacist. You can call me lots of things.  
19 The thing I am most proud of is I am a  
20 pharmacist, and this was so disturbing that it  
21 absolutely astounded me, the breadth and depth  
22 of the negative aspects of these individuals'  
23 expected practice environments. I knew that  
24 it would be bad, but I didn't expect it to be  
25 this horribly bad.

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1           Q.     On page 8 of your report, you  
2 state that responding pharmacists likely  
3 viewed the surveys as a sincere effort by the  
4 board to understand how pharmacists' workloads  
5 impact patient safety, right?

6           A.     Yes.

7           Q.     And you note some of the written  
8 comments that you've talked about, and you  
9 note that some of them even requested that the  
10 board take action to improve working  
11 conditions and patient safety, right?

12          A.     Yes.

13          Q.     Is it possible that the  
14 pharmacists who chose to respond to the survey  
15 were more likely to be those pharmacists who  
16 wanted the board to take action?

17          A.     I can't agree with that statement.  
18 You don't know.

19          Q.     And you put throughout your report  
20 comments that pharmacists chose to write  
21 indicating their dissatisfaction with their  
22 current work environment, right?

23          A.     Yes.

24          Q.     Is it possible that the  
25 pharmacists who chose to take this survey were

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1 more likely to have complaints to voice about  
2 their work environment than the pharmacists  
3 who did not respond?

4 MR. ELSNER: Objection.

5 A. I can't agree with it.

6 Q. Why not?

7 A. You simply do no know.

8 Q. Is it possible that many of the 80  
9 percent of pharmacists who chose not to  
10 respond to the survey simply did not have as  
11 many complaints about their workload and  
12 patient safety?

13 A. You can't make that assessment.

14 They could be worse, they could be equal, they  
15 could be better as to how they viewed their  
16 environment. They just simply did not choose  
17 to verbally respond in writing.

18 To be honest with you, I don't  
19 think that that needs to be the focus. My  
20 concern would be let's look at what these  
21 individuals who did respond actually said from  
22 a qualitative standpoint.

23 Q. Thank you.

24 A. You practice in an esteemed  
25 environment, and when I was a dean -- when I

1 wasn't a faculty member, when I was a dean  
2 overseeing a thousand people, if one  
3 individual would state some of the things that  
4 were stated in some of these comments, it  
5 would absolutely be all that I needed to do to  
6 make a change. And I'm not trying to put  
7 myself in your position, but if somebody in  
8 your firm -- for example, one of the women,  
9 page 82 of the 2021 study, indicated that she  
10 had been pregnant for 40 plus weeks, she  
11 wasn't able to take a break to go to the  
12 bathroom or to eat. If that environment was  
13 present at any place where I had worked in my  
14 life, things would be done differently  
15 immediately because of the severity of that.  
16 It didn't matter whether this was one person  
17 or ten persons that made this comment. One  
18 was all I would need to see. And I'm not sure  
19 what you would look at in your firm, but one  
20 individual with these kinds of working  
21 conditions would mean, in my estimation, to  
22 make some changes immediately.

23 Q. On page 10 you discuss  
24 Dr. Selzer's comments on the proportion of  
25 large chain grocery respondents, the

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1 proportion change between '20 and '21. Do you  
2 recall that?

3 A. Yes.

4 Q. And you actually say her analysis  
5 is misleading. Was there not a change in the  
6 proportion of these types of respondents  
7 between those two years?

8 MR. ELSNER: Objection.

9 A. The change was obviously there,  
10 but the impact of that change and the  
11 importance of that change in my mind just  
12 wasn't important.

13 Q. Okay. But you do understand what  
14 she's saying here about proportion, that the  
15 respondent pool is made up of a larger  
16 percentage of large chain grocer pharmacists  
17 than it was in 2020?

18 MR. ELSNER: Objection.

19 A. I can't agree with her statistical  
20 analysis.

21 Q. About the proportion of the  
22 respondent pool?

23 A. The increase of 50 percent for  
24 respondents in this study.

25 Q. I'm sorry. What was that?

1           A.     I said that she states in that  
2 paragraph that it was -- there was an increase  
3 of 50 percent of respondents in this setting,  
4 it was 24 percent of responding pharmacists in  
5 2020 and 36 in 2021. In fact, it's 71  
6 individuals, an increase of about 7 percent.  
7 So I don't agree with her statistical  
8 findings.

9           Q.     But you agree with the numbers 24  
10 percent and 36 percent, correct?

11           MR. ELSNER: Objection.

12           A.     I'd have to go through and do the  
13 calculation, which I didn't do.

14           Q.     Okay. And your -- regardless of  
15 the calculation being correct, your opinion  
16 that the number of large chain grocer  
17 respondents only had a seven-person change  
18 over those two years and that makes that  
19 change insignificant to the survey results?

20           A.     In my estimation, yes.

21           Q.     So the hard number, that  
22 seven-person change, is the more important  
23 number rather than those proportion numbers  
24 that Dr. Selzer was looking at in your  
25 opinion, right?

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1 A. You said seven. Do you mean 71?

2 Q. Yeah. I'm sorry. 71.

3 A. That seven percent seems  
4 irrelevant to me.

5 Q. Okay. You explain this increase  
6 by citing the Ohio Board of Pharmacy annual  
7 report for 2020 which says there were 1,000  
8 new pharmacists in 2020.

9 Do you see that?

10 A. Okay.

11 Q. And you actually say on the bottom  
12 of page 10 had Dr. Selzer looked, she may have  
13 begun to answer her other questions by  
14 reviewing the annual reports. What do you  
15 mean by that?

16 A. I think that she didn't analyze  
17 why the survey was done, what was the purpose  
18 of the study. She didn't do that component.

19 Q. And that -- I'm sorry. Is that  
20 your answer to what I'm asking here; had she  
21 looked at these annual reports, she may have  
22 begun to answer her other questions?

23 MR. ELSNER: Objection.

24 A. You know, I'm sorry. I can't  
25 predict what Dr. Selzer would or wouldn't do.

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1           Q.     I'm asking you what that sentence  
2 in your report means when you say had  
3 Dr. Selzer looked at these reports, she may  
4 have begun to answer her other questions?

5           A.     That she needed to look at what  
6 the survey purpose was, why was the survey  
7 done, how was it to be administered, and what  
8 were the results that were found to be used  
9 for.

10          Q.     And you recall in her report that  
11 she uses the Board of Pharmacy's own words in  
12 terms of what the purpose of the survey is,  
13 correct?

14          A.     Can you direct me to that part of  
15 her report that you're referencing, please?

16          Q.     Yes. Give me a second. On page  
17 46 of Dr. Selzer's report, if you have that --

18          A.     Yes, I do.

19          Q.     -- she cites Mr. McNamee's  
20 testimony with regards to the purpose and  
21 intent of the survey.

22          A.     Yes.

23          Q.     Do you disagree with any of that?

24                    MR. ELSNER: Objection.

25          A.     This is a verbatim statement of

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1 what was stated by Mr. McNamee in his -- his  
2 deposition.

3 Q. Okay. So you agree that that's  
4 the purpose of the Ohio Board of Pharmacy  
5 surveys?

6 MR. ELSNER: Objection.

7 A. The intent of the survey was to  
8 capture vital feedback on pharmacists' working  
9 conditions in the state.

10 Q. Do you agree with that?

11 A. Based upon my assessment of the  
12 survey, I would agree with that.

13 Q. Okay. So you just told me that  
14 Dr. Selzer did not analyze the purpose of the  
15 survey, so what do you mean with that  
16 criticism of her report?

17 A. I'm referencing the fact that  
18 she's looking at response rate as a key  
19 component. And if you look at a field study,  
20 response rate is not a major factor that needs  
21 to be considered. What you need to consider  
22 is the totality of the responses and the  
23 perception of what you're trying to gather.  
24 This was not to be in any way, shape or form  
25 some type of an analytical prediction survey.

1 It was an analytical field study only.

2 Q. Is it part of your opinion in this  
3 case, your written opinion, that this was a  
4 field study and response rates are not as  
5 important in field studies?

6 MR. ELSNER: Objection.

7 A. That's correct.

8 Q. Can you point me to where in your  
9 written report that appears? And I ask  
10 because I did not see anything about the  
11 purpose and meaning of a field study in your  
12 report.

13 A. Do you want me to go through the  
14 entire report to come up with the specific  
15 item? If that's the case, you're going to  
16 have to give me some time to do that.

17 Q. No, I don't think that's  
18 necessary. I just did a quick word find on  
19 field study and didn't see it. Is there  
20 another term I should search for pinpointing  
21 when you talk about that?

22 A. The purpose of the study.

23 Q. The purpose of the study.

24 A. So when the Ohio Board constructed  
25 this survey, they didn't say it was going to

1       be a field study, but my assessment of what  
2       was done, in my perception, my experience, in  
3       my expertise, indicates that this is a field  
4       study. That's perhaps an academic, definitive  
5       term that somebody like the Board of Pharmacy  
6       didn't feel they needed to use. They simply  
7       needed to state what they were doing. My view  
8       of what this is is from the perspective of  
9       somebody that studied and analyzed surveys and  
10      survey research and questionnaire design my  
11      entire career.

12           Q.     Can you turn to page 11 of your  
13      report, please? In the last page -- or the  
14      last sentence of page 11 you state that in my  
15      opinion, the Ohio Board of Pharmacy surveys  
16      were valid and appropriate for their purpose  
17      and use. And you talked a lot about the  
18      purpose, and I believe we have the Ohio Board  
19      of Pharmacy's stated purpose of the surveys.  
20      Can you explain to me what you mean by "use"  
21      in that sentence?

22           A.     Okay. Looking at what was the  
23      purpose of the study, to get a general sense  
24      of working conditions, all right? And when I  
25      say "use," then the Board of Pharmacy would

1 choose to do what it is that they felt  
2 necessary in response to what these surveys  
3 found. So what I'm trying to say was that  
4 this survey was valid from the standpoint of  
5 what it was intended to do, how it was to be  
6 carried out, how it was administered, and then  
7 the purpose and the use -- the use would  
8 follow the purpose and the findings from what  
9 they did.

10 Q. Is it your opinion that the  
11 purpose included finding out the working  
12 conditions specific to dispensing opioids?

13 MR. ELSNER: Objection.

14 A. The purpose was looking at general  
15 safety conditions that were applicable from  
16 the perception of these pharmacists, and if  
17 you look at their practice environment, one of  
18 the key components of that practice  
19 environment is the safe and appropriate  
20 dispensing of opioid prescriptions.

21 Q. Is there a difference in a  
22 pharmacist's work when it comes to dispensing  
23 opioids versus other prescription medication?

24 A. There's additional requirements  
25 that are put into play, yes.

1           Q.     Were any of the survey questions  
2 specifically about dispensing opioids?

3           MR. ELSNER: Objection.

4           A.     They weren't; however, the  
5 assessment of their view of the safety of the  
6 environment in which they practice, the  
7 stresses that they were under would have a  
8 definite impact on how opioids were safely or  
9 unsafely dispensed in that environment. So  
10 they didn't have to ask a specific question  
11 about opioids. It was the general workplace  
12 safety environment that resonated with me.

13          Q.     So opioid dispensing, what you're  
14 saying, because it's part of the general  
15 workload of a pharmacist, you can look at  
16 these questions and responses and discern  
17 pharmacists' attitudes and concerns with  
18 respect to all aspects of pharmacist duties;  
19 is that fair?

20          MR. ELSNER: Objection.

21          A.     Could you repeat the question,  
22 please?

23          Q.     Well, let me start here. Opioid  
24 dispensing is part of the general workload of  
25 a pharmacist, correct?

1           A.       Yes.

2           Q.       And there's a lot of other duties  
3       that are involved in the general workload of a  
4       pharmacist, correct?

5           A.       Yes.

6           Q.       So these responses about general  
7       workload and patient safety in the pharmacy  
8       setting inform context of opioids and all  
9       those other duties that a pharmacist has,  
10      right?

11         A.       Yes.

12         Q.       And that's what you're saying  
13      here; you're not saying that any one of these  
14      answers is specific to conditions in  
15      dispensing opioids, are you?

16         A.       I'm not saying that, but it's part  
17      and parcel of the stress, pressure and safety  
18      component of pharmacists and their need to do  
19      that in a practice setting.

20         Q.       So one of the things -- sorry. Go  
21      ahead.

22         A.       One of the tables in my report  
23      lists out, not inclusive, but some of the  
24      items that pharmacists need to consider when  
25      they are in a practice environment. That

1       happens to be Table 1. And you go through  
2       that list. These are not separate, mutually  
3       exclusive items. These are items that work in  
4       concert to make it even more difficult based  
5       upon what you see as what the expectations are  
6       in each and every one of these. So it's not  
7       additive. It's synergistic. One plus one  
8       doesn't equal two. One plus one might equal  
9       ten as far as stress, strain, stress, et  
10      cetera.

11           Q.     So one of the things Dr. Selzer, I  
12       think, says in her report is that she can't  
13       extrapolate from the questions and the results  
14       information specific to opioid dispensing, but  
15       are you disagreeing with her on that point and  
16       you're saying you can do that?

17           A.     I'm disagreeing with Dr. Selzer's  
18       assessment because, first of all, she might  
19       have incredible expertise as a pollster. She  
20       has zero expertise in analyzing what goes on  
21       within a pharmacy practice, what pharmacists  
22       have to deal with. She did not go into a  
23       pharmacy, spend time to see what the  
24       environment was or analyze what the  
25       environment was. To her that was

1 inconsequential. And, in my estimation,  
2 that's absolutely crucial when you consider  
3 what these results are.

4 Q. But you don't think anyone just  
5 looking at these survey results can interpret  
6 them, do you; it's got to be somebody who  
7 knows about pharmacy conditions and dispensing  
8 regulations and opioid abuse and diversion?

9 A. I disagree with that, and I  
10 disagree with it based upon the verbal  
11 responses that you see. If you're a member of  
12 the general public and you see a woman in a  
13 practice setting that's pregnant telling  
14 someone that she can't go to the bathroom,  
15 that she can't take a lunch break, that she  
16 might be a salaried employee but she has to  
17 work 60 hours a week, I don't care what your  
18 discipline is -- I don't care what your  
19 profession or lack of profession is -- that  
20 resonates with me if I read that.

21 Q. You've mentioned that a couple of  
22 times and I understand you're upset by that  
23 comment. Is that comment anecdotal or is it  
24 representative of the response population?

25 A. In my mind it doesn't make any

1 difference if it's anecdotal or  
2 representative. I'm looking at this from a  
3 qualitative standpoint that this individual  
4 had the courage to walk away from an  
5 environment because she didn't feel safe doing  
6 it. That's all I need to see. I don't need  
7 to know whether this is representative or  
8 whatever. I just need to look at it at face  
9 value from a quality standpoint. That's  
10 disturbing to me. It would be disturbing to  
11 me if a general public person read this and  
12 analyzed it.

13 Q. If you could turn to page 14 of  
14 your report. The last sentence in that only  
15 full paragraph in the middle of the page  
16 starts out "For the Board."

17 Do you see that?

18 A. Yes.

19 Q. And you say, "For the board, the  
20 question is not if pharmacies play a role in  
21 opioid abuse and diversion but why they play a  
22 role and whether enhanced regulations and  
23 changes in corporate conduct may reduce the  
24 risk of abuse and diversion." What do you  
25 mean by this?

1           A.       Okay. I think that pharmacists  
2 play a role in proper or improper opioid abuse  
3 and diversion, and regulations that impact  
4 patient safety would enhance their ability to  
5 do things in a proper and professional manner  
6 that they need to.

7 Q. Are you saying that this is the  
8 question that the Ohio Board of Pharmacy  
9 sought to answer with their surveys?

10 A. No. It was just looking at what  
11 the workplace safety was and how that impacts  
12 this general specific component of workplace  
13 safety.

14 Q. So you're not saying that they  
15 were trying to answer these specific questions  
16 about opioids that you put in this sentence,  
17 right?

18 MR. ELSNER: Objection.

19           A.     In order to put this sentence in  
20 proper context, I think you have to read the  
21 entire paragraph and look at "The Ohio Board  
22 also determined that 40 percent of those who  
23 overdosed had a prescription for a  
24 benzodiazepine within 90 days of death. 30  
25 percent of all unintentional overdose deaths

1 involved both an opioid and benzodiazepine  
2 prescription." All right. So that background  
3 puts in context what it is that you're trying  
4 to just isolate into one sentence. You have  
5 to look at the entire context of that  
6 paragraph.

7 Q. And I'm not trying to be tricky  
8 here by isolating and taking something out of  
9 context, so, you know, I appreciate your  
10 correction there. I'm trying to figure out  
11 how this relates to the surveys.

12 A. The surveys were to get  
13 pharmacists' perception of workload  
14 environments, and their stresses, the strains  
15 that they expressed both through their Likert  
16 responses as well as the verbal responses  
17 indicated that they were incredibly stressed  
18 and overloaded; and if you consider those  
19 facts and then look at opioids and opioid  
20 dispensing, improper dispensing, it has a  
21 dramatic direct impact on how safe that  
22 process is.

23 Q. You are making that connection  
24 based on prior findings of the Board of  
25 Pharmacy, is that right, or are you making

1 that connection based on explicit connections  
2 that the Board of Pharmacy made with the  
3 survey?

4 MR. ELSNER: Objection.

5           A.       I'm just basing my assessment on  
6     the entire impact of what this paragraph is  
7     indicating.

8 Q. Okay. You cite in your opinion  
9 the CSA provision on corresponding  
10 responsibility. What is corresponding  
11 responsibility of a pharmacist?

12           A.       If you look at the Controlled  
13 Substances Act, that stipulated that drugs  
14 were classified in Class I through Class V as  
15 far as dangerous narcotics types of analgesics  
16 and other types of products, okay. And so  
17 pharmacists have responsibilities for making  
18 sure that only those prescriptions that can be  
19 dispensed are dispensed, quantities are  
20 limited in some of these cases, you have to  
21 get a new prescription for each and every one  
22 of a controlled substance II classification.  
23 So that's what I'm referring to as added  
24 responsibilities. So it's not only a state  
25 board of pharmacy stipulation but it's a Drug

1 Enforcement Administration stipulation. It's  
2 a federal statute that comes into play, too.  
3 So you've got two overlapping regulatory  
4 agencies, the Board of Pharmacy and the Drug  
5 Enforcement Administration, impacting what  
6 pharmacists have to do when they dispense  
7 these medications.

8 Q. And what do pharmacists have to do  
9 in order to fulfill their corresponding  
10 responsibility?

11 A. They have to follow to the letter  
12 of the law which drugs can be dispensed, how  
13 often they can be dispensed, how many times a  
14 prescription can be refilled. If it's a new  
15 prescription for a Schedule II product, it has  
16 to be a new prescription each and every time  
17 that product is filled. There are limits on  
18 how many tablets, capsules, milliliters of  
19 liquid that can be dispensed in some of these  
20 cases. How these products are ordered from a  
21 wholesaler or from a manufacturer are  
22 stipulated as far as specific forms and  
23 documents that have to be provided. So  
24 there's documentation, there's recording after  
25 the fact of what was done and why it was done.

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1 This all has to be done by the pharmacist.

2                   And in the state of Ohio there's  
3 the additional assessment through their  
4 automated online system, the OARRS, that you  
5 have to document each and every prescription  
6 for an opioid in that system.

7                   Q.        Have you ever heard of the term  
8 "red flag"?

9                   A.        Yes, I have.

10                  Q.        What is that?

11                  A.        Red flag is an indicator to a  
12 pharmacist in a practice environment that they  
13 need to look at several different things  
14 pertaining to the dispensing of a particular  
15 product. And let me elaborate.

16                  If you're looking, for example, at  
17 the paragraph that we were just talking about,  
18 if an opioid is prescribed along with a  
19 benzodiazepine, that's a red flag. Why is  
20 that a red flag? It's because the interaction  
21 of those two drugs is not additive but it's  
22 synergistic. The impact of the drug with the  
23 addition of another drug is much more intense  
24 than either one of those drugs taken by  
25 themselves. So that's one of the items in a

1 red flag.

2                   The second would be is the patient  
3 traveling a long distance either to the  
4 prescriber to get the prescription or to the  
5 pharmacy to get the prescription dispensed.  
6 So it's the types of drugs, it's the distance  
7 that the individual travels, how frequently  
8 are they refilling or filling these  
9 prescriptions. That's another part of the red  
10 flag process.

11                  And, finally, are they simply  
12 paying cash as opposed to using a credit card  
13 or charging the item to an account.

14                  So these items, again, are part of  
15 what's called red flags, and these are Drug  
16 Enforcement Administration red flags, they're  
17 National Association of Boards of Pharmacy red  
18 flags, and, in some cases, state red flag  
19 components regarding the practice and  
20 dispensing of these products.

21                  Q.     These red flags that you named,  
22 are these the only red flags or are they  
23 examples of red flags?

24                  MR. ELSNER: Objection.

25                  Go ahead.

1           A.       They're simply examples.

2           Q.       And if a red flag is apparent in  
3       an opioid or controlled substance  
4       prescription, what duty does the pharmacist  
5       have?

6           A.       The pharmacist can refuse to fill  
7       it. And in my practice in the past I have  
8       done that. I have refused to fill  
9       prescriptions and I have contacted other  
10      pharmacies in the area where I was practicing  
11      to indicate that X and such person may be  
12      trying to do X and such receipt of a  
13      prescription.

14          Q.       Now, when a red flag is present,  
15      does a pharmacist have to refuse to fill the  
16      prescription?

17          A.       With due diligence and assessment,  
18      the pharmacist shouldn't fill the  
19      prescription, no.

20          Q.       Will something be a red flag in  
21      one instance and perhaps not in another, like  
22      the example of traveling long distance?

23                    MR. ELSNER: Objection.

24          A.       There might be an instance where  
25      somebody is visiting a relative 200 miles away

1 from home and they're in a situation where  
2 they need to have a medication filled, so that  
3 red flag wouldn't have the prominence of  
4 somebody that's just doing this to obtain the  
5 drug, period.

6 Q. And in that instance should the  
7 pharmacist dispense the opioid medication?

8 A. With due diligence and analyzing  
9 the situation thoroughly, talking with the  
10 patient, assessing why they are getting the  
11 prescription, where they're getting the  
12 prescription, that can eliminate the  
13 importance of that red flag.

14 Q. And do pharmacists have to use  
15 their independent judgment in evaluating what  
16 is a red flag and how to handle it?

17 A. Pharmacists have the ability to be  
18 able to do that. For example, in the state of  
19 Ohio any pharmacist in any practice  
20 environment can refuse to fill that type of a  
21 prescription if they feel that it shouldn't be  
22 filled.

23 Q. Do you agree that pharmacists have  
24 to employ clinical judgment and individualized  
25 patient-centered decision-making in dispensing

1       opioids?

2                   MR. ARNOLD: Objection. It's  
3 beyond the scope.

4                   A. Pharmacists use their clinical  
5 judgment each and every minute of each and  
6 ever hour of the practice time that they're in  
7 their role as a pharmacist.

8                   Q. Is knowledge of pharmacy  
9 regulations that you've talked about in your  
10 report essential to being able to interpret  
11 the Ohio Board of Pharmacy surveys?

12                  MR. ELSNER: Objection.

13                  A. They're related. They are  
14 intertwined.

15                  Q. And, in your opinion, does someone  
16 with survey expertise also need expertise in  
17 the survey subject matter to be able to  
18 interpret the results of the survey?

19                  A. My assessment is if somebody is  
20 evaluating a survey as an external reviewer,  
21 if they don't know specific components of that  
22 particular survey design and methodology, they  
23 need to find out what that is through their  
24 own research before they make any type of a  
25 judgment.

1           Q.     What do you mean by design and  
2 methodology here when you say that?

3           A.     Okay. In my estimation,  
4 Dr. Selzer did not look completely at why this  
5 Ohio Board of Pharmacy was being done. She  
6 didn't analyze the conduct of what it was  
7 being done for. She didn't understand  
8 anything about the practice of pharmacy. She  
9 didn't go into a pharmacy to see how it was  
10 practicing in a specific location. In order  
11 to make an evaluation -- this is my  
12 estimation. In order to make an evaluation of  
13 a survey in that particular environment, you  
14 need to find out all that you can to get more  
15 educated on what the survey was designed to  
16 do, how the items were collected, and how the  
17 results were going to be used.

18           Q.     And her reliance on the stated  
19 purpose of the Board of Pharmacy surveys was  
20 insufficient in your opinion?

21           MR. ELSNER: Objection.

22           A.     It was insufficient because she  
23 didn't know anything about the practice of  
24 pharmacy.

25           Q.     And is knowledge of all the

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1 regulations and laws pertaining to dispensing  
2 and pharmacy practice necessary to be able to  
3 interpret the survey results or just some of  
4 the laws and regulations?

5 MR. ELSNER: Objection.

6 A. I think it's in some cases totally  
7 irrelevant. If you consider the fact that  
8 workplace conditions are going to impact each  
9 of the items that were in Table 1 that we  
10 referenced earlier in my report, that's what's  
11 important.

12 Q. Can you explain that to me?

13 A. Okay. Can we go to that  
14 particular table in my report?

15 Q. Sure.

16 A. Table 1. It's on page 32, okay.  
17 And if you go down each of these items that  
18 are listed, these are not some that you can  
19 say, well, I'm going to do the first five but  
20 I don't need to worry about the next five.  
21 When you're in a practice environment, when  
22 I've been in a practice environment, each and  
23 every one of these impacts what I do and how I  
24 do it. They're vitally important to be able  
25 to practice in a safe environment.

1                   And, again, let me point out this  
2 is not to make me feel better about what I'm  
3 doing. That's not my purpose as a pharmacist.  
4 My purpose as a pharmacist is to provide safe  
5 and appropriate care for the most important  
6 person in this process. It's not me. It's  
7 not the physician. It's not the supervisor  
8 that I report to. It's not my general  
9 manager. It is the patient. And if you don't  
10 have these in play, you're not going to be  
11 able to help the most important person in this  
12 equation, and that's the patient that you're  
13 supposed to be providing safe, efficient and  
14 appropriate care for.

15                  Q. Are you saying that the results of  
16 this survey speak to each of those categories  
17 in that table as to whether or not the  
18 respondents had sufficient time or ability to  
19 conduct their required tasks?

20                  A. To answer that question, I'm going  
21 to look at what the responses that were Likert  
22 scale items showed. I'm looking at some of  
23 the demographic items that were indicated,  
24 whether your practice site was in an  
25 institution, a chain or food market-based

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1       pharmacy, how many hours a week did you work,  
2       how long have you worked in that environment.  
3       Okay. You take those factors and you combine  
4       them with the verbal responses and you look at  
5       what's required in Table 1 -- this is not an  
6       all-inclusive listing. This is just some that  
7       I wrote down, all right. But you can't do  
8       your practice as a pharmacist if these items  
9       are not appropriately available to be  
10      practiced in a safe and appropriate  
11      environment for a pharmacist.

12           Q.     So, in your opinion, the survey  
13      results spoke to each of these tasks that  
14      you've written down here in Table 1?

15           MR. ELSNER: Objection.

16           A.     If you look at the totality of the  
17      surveys and the survey responses, I'm  
18      reiterating that both the verbal responses  
19      that were written, combined with the responses  
20      that were tabulated in the Likert scale  
21      component and the work environment, indicate  
22      that these have a major impact on pharmacy  
23      practice in the state of Ohio regardless of  
24      where you practice.

25           Q.     So from your review of those

1 demographics and survey results and written  
2 results and Likert scale, are you able to say,  
3 for instance, that the pharmacists who  
4 responded were unable to monitor, inventory  
5 and place orders to avoid shortages?

6 A. I would respectfully request that  
7 you just don't look at one of these items.  
8 They're not mutually exclusive items. They  
9 are additive. You can't look at one without  
10 looking at the other 15. You have to look at  
11 them in total.

12 Q. Okay. So same question. Can you  
13 look at the survey results, the comments, the  
14 demographics, the Likert scale results and  
15 make the determination that pharmacists are  
16 saying they cannot do any of the 15 things  
17 that you put in Table 1?

18 MR. ELSNER: Objection.

19 A. To me it's not relevant whether  
20 they can do one or two or three of these.  
21 Some of these come into play each and every  
22 time they dispense one medication. Some of  
23 them have applicability to only certain  
24 medications.

25 If you look at, for example, the

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1 last four items, ability to focus, ability to  
2 take breaks, 12-hour plus shifts, no  
3 requirement for working unpaid hours, those  
4 impact every single thing that you do as a  
5 practicing pharmacist.

6 If you go back and look at  
7 specific ones, like opioids, and the adequate  
8 time to accurately verify prescriptions in the  
9 second series of rows, that's pertinent to  
10 opioid dispensing, okay, but you can't  
11 appropriately take care of that one that I  
12 just talked about if you don't have the  
13 ability to focus, you can't take a break, if  
14 you can't go to the bathroom for crying out  
15 loud, and you work 12-hour shifts. That's  
16 absolutely unbelievable that somebody works  
17 that many hours. I don't care how bright you  
18 are. I don't care how efficient you are. The  
19 stress, strain and mental toll that that has  
20 on people is incalculable.

21 Q. Can you go to page 14 of your  
22 opinion? In the last sentence on that page,  
23 leading into page 15, you talk about  
24 pharmacists fulfilling controlled substance  
25 obligations, and you state that "to suggest

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1       that patient safety does not encompass filling  
2       dangerous opioid prescriptions ignores why and  
3       how pharmacists protect patients."

4                  Do you see that?

5                  A.       Yes.

6                  Q.       When you read Dr. Selzer's  
7       opinion -- report, is she suggesting in her  
8       report that patient safety does not encompass  
9       filling certain prescriptions?

10                 MR. ELSNER: Objection.

11                 A.       That's not what she said.

12                 Q.       Okay. Isn't she just saying that  
13       you can't take the results of the survey and  
14       draw conclusions about opioid dispensing from  
15       them? That's her opinion, correct?

16                 MR. ELSNER: Objection.

17                 A.       I think her opinions are invalid  
18       because she doesn't have any idea what it is  
19       that she was assessing. She didn't have any  
20       understanding what a pharmacist was. She  
21       didn't have any understanding what pharmacists  
22       do. She hadn't been in a pharmacy to see what  
23       their workplace environment is. And I don't  
24       think you can evaluate something unless you  
25       have a thorough understanding of what it is

1 you're supposed to be evaluating. And, again,  
2 I'm not trying to denigrate her ability as a  
3 pollster. She's nationally recognized, isn't  
4 she? But as to her ability, background to  
5 analyze a pharmacy or pharmacy component, she  
6 doesn't have the backroom -- background --  
7 excuse me -- experience or she didn't take the  
8 time to look at what she was supposed to look  
9 at in order to assess what was going on in  
10 this survey.

11 Q. But your opinion is that you can  
12 draw conclusions about opioid dispensing from  
13 these questions and results, right?

14 A. Yes, I can.

15 Q. Are you able to tell from the  
16 survey that pharmacists are receiving  
17 prescriptions for opioids that are not  
18 legitimate?

19 MR. ELSNER: Objection.

20 A. I can't make that assessment  
21 unless I look at each and every prescription  
22 that was presented for proper filling. What  
23 can I -- what I can look at is the general  
24 environment that these pharmacists were  
25 expected to practice in, not being able to

1 take a break, not being able to go to the  
2 bathroom for crying out loud, you don't have  
3 time to eat. What if someone has diabetes and  
4 they can't take a break or they can't eat?  
5 How does that impact their metabolic state?  
6 So those factors impinge directly on how they  
7 can do what they're supposed to do in a safe  
8 and effective environment, including the  
9 dispensing of opioid and opioid prescriptions.

10 Q. Are you able to tell from this  
11 survey that pharmacists are filling opioid  
12 prescriptions without conducting due  
13 diligence?

14 A. What I'm saying is based upon the  
15 responses of pharmacists, they feel they don't  
16 have time to do what they need to do to take  
17 care of their patients that they're  
18 responsible for taking care of, and that would  
19 include opioid dispensing and opioid  
20 prescriptions for patients. They simply don't  
21 have the time to do lots of things, including  
22 due diligence of monitoring opioids and opioid  
23 prescriptions.

24 Q. But you can take the results of  
25 this survey and state that the pharmacists who

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1 responded are filling opioid prescriptions  
2 without conducting due diligence?

3 MR. ELSNER: Objection.

4 A. I can't make that statement and  
5 that's not the purpose of my evaluation of the  
6 surveys.

7 Q. Are you able to tell from this  
8 survey that pharmacists are dispensing opioid  
9 prescriptions that are not for a legitimate  
10 medical purpose?

11 MR. ELSNER: Objection.

12 A. I can't specifically state that,  
13 but what I can see is there's a work  
14 environment that makes lots of things unsafe,  
15 including dispensing opioid prescriptions. It  
16 also includes monitoring patients, counseling  
17 patients, preparing vaccinations for  
18 administration, administering the  
19 vaccinations, monitoring the patient after  
20 they get a vaccination. It's a combination of  
21 several things that can potentially lead to  
22 problems with all kinds of medications that  
23 are being dispensed.

24 Q. Not just opioid dispensing but  
25 everything that falls under the duties of a

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1           pharmacist are impacted, correct?

2           A.       That's correct.

3                   And I make that assessment based  
4                   upon the Likert responses as well as the  
5                   verbal responses that were presented.

6           Q.       If you were designing a survey to  
7                   pharmacists to find out about conditions  
8                   specific to dispensing opioid medications,  
9                   would you use these questions or would you use  
10                  questions that specifically talk about  
11                  opioids?

12           A.       I would look at specific questions  
13                  that were focused on opioids and opioid  
14                  dispensing. If that was the purpose of the  
15                  study, I would, first of all, look at what's  
16                  been done before, why am I doing the study,  
17                  what questions am I going to ask, have these  
18                  types of questions been asked by other  
19                  researchers. If they have, can I get their  
20                  approval and permission to reuse those  
21                  questions in a survey that I want to do? And  
22                  then focus my responses to the data collected  
23                  based upon what it is that I was intending to  
24                  do.

25           Q.       You agree with me --

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1           A.       That's how I would design that  
2 study.

3           Q.       You agree with me that that was  
4 not the purpose of the Ohio Board of Pharmacy  
5 surveys, right?

6           MR. ELSNER: Objection.

7           A.       That was not the purpose of the  
8 Ohio Board of Pharmacy surveys.

9           Q.       Can you look at page 15, footnote  
10 61? And this footnote is in reference to  
11 Dr. Selzer's report where she ran some search  
12 terms in the survey results and found  
13 relatively few mentions of opioids and some  
14 related terms, and you note in that footnote  
15 that she did not run search terms for OARRS or  
16 PDMP, which also implicate controlled  
17 substances, correct?

18          A.       Yes.

19          Q.       Did you run these search terms in  
20 the results of the pharmacy surveys?

21          A.       I did, but I can't tell you what  
22 those factors were because I didn't include it  
23 in my report.

24          Q.       Do you recall whether or not there  
25 were significant mentions of both of those?

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1           A. Again, Ms. Wohl, it wouldn't be a  
2 quantitative assessment on my part. I would  
3 look from a qualitative standpoint of what  
4 each individual said in response to this  
5 component and then see what perhaps an issue  
6 might be that needs to be addressed. It  
7 wouldn't matter how many times it was  
8 indicated. If it was indicated once, that's  
9 all I would need to see from a qualitative  
10 review standpoint.

11           Q. The significance of the terms that  
12 are related to opioids that she ran, and also  
13 OARRS and PDMP, is that if they appeared at  
14 all, that is of significance in terms of  
15 dispensing opioids in your opinion; is that  
16 right?

17           MR. ELSNER: Objection.

18           A. What would be important to me  
19 would be considering those specific  
20 qualitative components in addition to the  
21 other things that were indicated in responses,  
22 either the Likert scale items, the demographic  
23 items that were collected or the written  
24 responses that were provided.

25           Q. Let me ask one more question or

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1 two more questions before we take a lunch  
2 break here.

3 If you could turn to page 26. The  
4 paragraph that starts out "Like the Ohio  
5 survey." Here you're talking about the  
6 Missouri survey, and your second sentence  
7 there says, "Yet, some pharmacists recognized  
8 that the workload pressures they face impacted  
9 their ability to dispense controlled substance  
10 safely." Are you talking about the responses  
11 in the Missouri survey in that sentence?

12 MR. ELSNER: Objection.

13 A. Both the surveys.

14 Q. Okay. You didn't cite anything  
15 there. Can you point me to the specific  
16 pharmacist responses that you're talking  
17 about?

18 A. Again, it is in reference to  
19 general assessment of workplace safety, the  
20 pressures that they're under, the stressors  
21 that they're under, the staffing that they  
22 have, the inappropriate and insufficient  
23 training of the staff that they have. That is  
24 part of the workload pressure that has no  
25 doubt impact upon dispensing any product

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1       safely, including opioids or controlled  
2       substances.

3           Q.     So you're not saying here the  
4       pharmacists specifically recognized pressures  
5       impacting dispensing controlled substances,  
6       they just generally recognize workload  
7       pressures that impact everything about their  
8       pharmacy practice?

9           A.     What you just stated most  
10      definitely impacts everything that they do  
11      from a practice standpoint, including the  
12      proper monitoring and dispensing of controlled  
13      substances.

14           Q.     So, again, just to understand this  
15      sentence, you're not stating here in this  
16      sentence that respondents recognize workload  
17      pressures specific to their ability to  
18      dispense controlled substances safely, are  
19      you?

20                   MR. ELSNER: Objection.

21           A.     I'm talking about their ability to  
22      dispense anything, but when we're talking  
23      about controlled substances, that has an added  
24      weight to it.

25           Q.     Okay. So you put controlled

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1 substances in there as an example, not as what  
2 they're specifically recognizing?

3 A. It's one example, but it's a  
4 really important example because of what can  
5 happen if they're not appropriately monitored.

6 Q. Okay. Just wanted to make sure I  
7 understood that.

8 MS. WOHL: Can we go off the  
9 record?

10 THE VIDEOGRAPHER: Off the record,  
11 12:07.

12  
13 (Luncheon recess taken.)  
14  
15  
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- - - - -

2

AFTERNOON SESSION

3

THE VIDEOGRAPHER: On the record,  
4 12:46.

5

CONTINUED EXAMINATION OF

6

JACK E. FINCHAM, Ph.D.

7

BY MS. WOHL:

8

Q. Welcome back, Dr. Fincham.

9

A. Thank you.

10

Q. I would like to start off our post-lunch session with going back to the purpose of the survey, which I think we've said a few times, which is to assess the general workload and work conditions at Ohio pharmacies. Is there anything about that I didn't get right?

17

A. No. You did.

18

Q. Now, you mentioned a couple of times this morning the comment about the one pregnant woman working 40 plus hours, and I understand that is upsetting, but can you say that that is a general working condition at pharmacies in Ohio?

24

MR. ELSNER: Objection.

25

A. That was specific to that

1 individual's complaints, but, Ms. Wohl, if you  
2 would look at other verbal comments talking  
3 about the lack of breaks as being a real  
4 important factor in their work satisfaction,  
5 if you look at how they -- many people,  
6 including some Kroger pharmacists, talked  
7 about the negativity of metrics; having to  
8 have certain constraints placed upon how they  
9 can practice in a safe and effective  
10 environment; the number of vaccines that they  
11 had to give; the number of MTMs, medication  
12 therapy management consultation, that they  
13 have to provide. In some cases in my mind  
14 that just doesn't make sense, to put a time  
15 limit. When I've done MTMs, when I've done  
16 medication therapy management evaluation, it  
17 takes me at least 30 minutes per patient, so  
18 if you have that as a determining metric, it's  
19 going to compound things.

20 So it wasn't just that one  
21 individual talking about her break situation.  
22 There were lots of other comments from many  
23 other pharmacists, and some of the pharmacists  
24 didn't say that they worked at Kroger but no  
25 doubt there were others that didn't list their

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1 practice site that were Kroger pharmacists  
2 that expressed those concerns.

3 Q. Okay. So is it your opinion,  
4 sitting here today, that it is a general  
5 working condition at Ohio pharmacies that  
6 pharmacists are not provided with adequate  
7 breaks?

8 MR. ELSNER: Objection.

9 A. It depends upon the particular  
10 practice environment. And if we look at the  
11 wide range of respondents to both of these  
12 surveys, there were pharmacists that practiced  
13 in an institutional setting that didn't have  
14 that concern, there were pharmacists in an  
15 independent practice setting that didn't have  
16 those concerns. So there were some situations  
17 where that was presented as being a real issue  
18 and a dramatic influence on their ability to  
19 practice, but it would depend upon the  
20 particular focal point of what you're  
21 examining, and that came through in the  
22 different demographic components of practice  
23 sites that came through in the study.

24 Q. Is it a general condition at large  
25 chain grocer pharmacies that pharmacists do

1 not have adequate breaks in Ohio?

2 A. Based upon what the survey results  
3 were, I would answer that question yes, it's a  
4 major concern. It's not just grocery store  
5 pharmacies. It's major chain pharmacies  
6 total.

7 Q. If we could just be clear. I  
8 didn't ask major concern. I'm asking if it's  
9 a general condition.

10 MR. ELSNER: Objection.

11 A. And I guess I'm saying it's a  
12 major concern because if it's a general  
13 condition, to me that's majorly concerning.

14 Q. So then the answer is yes, it  
15 is -- you can say it is a general condition at  
16 large chain grocers that pharmacists in Ohio  
17 do not have enough breaks, time for breaks?

18 MR. ELSNER: Objection.

19 A. I can't make that -- that  
20 statement.

21 Q. So you find it concerning but you  
22 can't say it is a general condition?

23 A. Okay. What I'm trying to say,  
24 Ms. Wohl, is if you look at this from a  
25 quantitative standpoint, you're looking at a

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1       number X or a number Y; if you look at it from  
2       a qualitative standpoint, if it impacts 10  
3       percent or 20 percent of large chain store  
4       grocery pharmacies, that's a significant  
5       impact in my estimation.

6           Q.     Is it a general condition?

7           MR. ELSNER: Objection.

8           A.     I don't know if it's a general  
9       condition or not, but it's a concerning factor  
10      to me.

11          Q.     Okay. You have criticized  
12       Dr. Selzer as being unqualified to offer  
13       analysis of the Ohio Board of Pharmacy  
14       surveys. My question to you is what  
15       qualifications does somebody need to have to  
16       form an opinion on these surveys or analyze  
17       the results and methodology?

18          A.     If they don't have a particular  
19       expertise in a defined area, such as pharmacy,  
20       before they evaluate a survey to assess  
21       pharmacists and workplace safety, they need to  
22       do what they can do to try to get familiar  
23       what the environment is, what is the major  
24       concerns that might be apparent when you  
25       consider the practice environment. So you

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1 don't have to be a pharmacist to be evaluating  
2 a particular survey. You have to have someone  
3 that at least has an appreciation of what  
4 pharmacy is and what the impacts might be on  
5 patient safety. And so if you look at -- if  
6 she would have done research based upon what  
7 were the other studies that have been done,  
8 what did they show, what did they examine,  
9 what kinds of questions did they ask, why did  
10 they ask those questions, that gets at the  
11 point of why this particular study was done in  
12 the first place. So I examined what they  
13 wanted to look at, how they would ask the  
14 questions and what they were going to do with  
15 the results.

16 Q. I heard a couple of different  
17 answers to my question so I want to pinpoint  
18 what it is I'm looking for here. The  
19 qualifications that you believe somebody needs  
20 to have to form an opinion on these surveys,  
21 analyze the results, the methodology, I heard  
22 you say an expertise in pharmacies and then I  
23 heard you say an appreciation of what pharmacy  
24 is and patient safety.

25 A. I don't think you have to have an

1 expertise in pharmacy to do the evaluation. I  
2 think you have to have an understanding of  
3 what the practice environment is and what  
4 factors may impinge upon the safe practice in  
5 that environment. You don't have to be a  
6 pharmacist, but you have to have perhaps a  
7 perception of what the concerns are based upon  
8 what other studies have shown, what other  
9 studies have examined, those types of things.

10 Q. Will you give me some specifics  
11 about the qualification that you stated of an  
12 understanding of practicing pharmacy and the  
13 factors involved? What would somebody need to  
14 do to become an expert or to have the  
15 qualifications that we're talking about here?

16 A. What is the practice environment  
17 that you're examining? What are the  
18 responsibilities within that practice  
19 environment? So if you don't know much about  
20 institutional pharmacy practice, can you  
21 shadow a pharmacist in that environment to see  
22 what it is he or she does? The same thing in  
23 a chain setting or a food market-based  
24 pharmacy. Just spend some time to try to get  
25 an appreciation of what factors are impacting

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1 how that individual does their due diligent  
2 responsibility to make sure the patients are  
3 safe.

4 Q. And, in your opinion, to be  
5 qualified to draw conclusions on these  
6 surveys, you would have to either be a  
7 pharmacist or shadow a pharmacist; is that  
8 fair?

9 MR. ELSNER: Objection.

10 A. That's not what I'm saying at all.  
11 I'm simply saying if you shadow a pharmacist,  
12 you might see what it is that they are doing  
13 and what they need to do. You don't have to  
14 be an expert on examining what it is that they  
15 do. You just have to have an appreciation of  
16 what's involved and what that means.

17 Q. Okay.

18 A. Let me give you an example. What  
19 about metrics? So when you perhaps go into a  
20 food market-based pharmacy and see that they  
21 have to have so many vaccinations within a  
22 defined period of time, ask them what they're  
23 supposed to be doing in order to get approval  
24 from their management.

25 Q. What I'm trying to understand is

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1 the qualifications that you believe are  
2 required to form an opinion on these.

3 A. I would state it as qualifications  
4 more than just simply an understanding of what  
5 it is that's being examined.

6 Q. So when you say Dr. Selzer is  
7 unqualified to offer opinions on this survey,  
8 what you're saying is she doesn't have the  
9 requisite understanding of the subject matter?

10 A. That's correct.

11 Q. And specifically the pharmacy  
12 subject matter, not the survey subject matter,  
13 right?

14 MR. ELSNER: Objection.

15 A. It's the pharmacy subject matter,  
16 which was the purpose of doing the survey in  
17 the first place.

18 Q. So when you are forming opinions  
19 on the survey, are you using any of your  
20 expertise related to surveys or are you just  
21 relying on your pharmacy expertise?

22 A. I'm using all of the above. I'm  
23 looking at what types of surveys I'm familiar  
24 with, what I've done in the past, how I've  
25 looked at others when they have viewed their

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1 research components. So that comes into play.  
2 But an additional factor is I've practiced in  
3 environments that have been stressful where  
4 there have been lots of impacts of what I do  
5 and how I do it. So that, in effect,  
6 supplements my questionnaire and survey  
7 research methodology with having some  
8 understanding of exactly what's going on in a  
9 particular pharmacy environment.

10 Q. Of all the prior surveys that you  
11 have experience in designing or analyzing, how  
12 many of them have been field studies?

13 MR. ELSNER: Objection.

14 A. If you would look at the 70  
15 studies that I talked about, the -- that have  
16 specific full sight on questionnaire and  
17 survey research, probably 15 of those 70 were  
18 field-type studies. And to elaborate, those  
19 field-type studies were utilizing a service  
20 that was available at the University of  
21 Georgia called the Georgia poll. And the  
22 Georgia poll I used at least 15 times to  
23 assess, in a field framework, what the lay of  
24 the land might be.

25 For example, I looked at physician

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1 assistants; I looked at individual's choice of  
2 using meta clinics, when those first came into  
3 play as an alternative to going to a  
4 physician's office or an emergency room. So  
5 the Georgia poll was focused on field-type  
6 studies that weren't defined numbers and  
7 percentages of people but were individuals  
8 that were utilized in numerous instances by  
9 numerous researchers at the University of  
10 Georgia through what was called the Georgia  
11 poll.

12 Q. Would you consider yourself  
13 unqualified to analyze survey results and  
14 methodology that were in a subject outside of  
15 pharmacy and medicine?

16 MR. ELSNER: Objection.

17 A. I would disagree with that because  
18 I've examined other types of environments that  
19 weren't specific for pharmacy per se or  
20 medicine per se.

21 To give an example or two, I've  
22 looked at managed care organizations, and so  
23 I'm not an expert on the ins and outs of  
24 everything about managed care, but I used my  
25 survey research analytical methodology to look

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1 at how I could examine several topics within a  
2 managed care environment. And I did the same  
3 thing from a public health point of view in  
4 public health studies that I did. So they're  
5 not disparate as far as A is never equal to B,  
6 but public health is certainly a part of the  
7 healthcare system, but I used expertise and  
8 knowledge that I gained over the years through  
9 research -- and I've, fortunately, had the  
10 ability to do other types of research  
11 endeavors -- to look at things that I don't  
12 necessarily have everything that I need to  
13 know about before I go into it. I study it  
14 very intently before I even attempt to do it.

15 Q. Would you be able to look at a  
16 survey that didn't have anything to do with  
17 your pharmacy, medical, healthcare knowledge  
18 and be able to offer an opinion on the  
19 methodology and the design of that survey?

20 A. I feel that I could, yes. And if  
21 I could give a rationale for doing that. One  
22 of the major references that I've used for 40  
23 years is a series of books, articles and  
24 treatises that have been written by a man  
25 named Donald Dillman. Donald Dillman is an

1 esteemed professor of sociology at the  
2 University of -- excuse me, at Washington  
3 State, and I've cited him in the report that I  
4 provided. But Dr. Dillman's field of study is  
5 sociology, okay, but his techniques for  
6 analyzing a potential survey focus is what  
7 I've used in the course of my studies. So I  
8 don't have to be an expert in everything, but  
9 I do have to have an understanding and  
10 appreciation of what it is I'm trying to  
11 assess and whether I have the ability to do  
12 that before I even start to assess it.

13 Q. Do you think that the COVID  
14 pandemic put more pressure on pharmacists and  
15 made their jobs more difficult?

16 A. I think as a general rule, it made  
17 everybody's job more difficult, but it  
18 impacted healthcare professionals to a  
19 significant degree, yes.

20 Q. Is it possible that those  
21 additional pressures were in the minds of  
22 pharmacists when they responded to this Ohio  
23 Board of Pharmacy survey?

24 A. I think, again, you have to look  
25 in total appreciation of what pharmacists have

1 to deal with, not only the COVID component  
2 with vaccinations, but the additional  
3 vaccinations that they provide, and most  
4 pharmacies now provide 15 or 20 different  
5 types of vaccinations. So COVID was crucial,  
6 it was important, and it added to the  
7 pressure, but those pressures were in  
8 existence long before COVID came into play,  
9 and that's been documented in the literature  
10 going back to the 1960s.

11 Q. Is it possible to know whether the  
12 respondents to the survey were thinking about  
13 COVID or opioid dispensing when they answered  
14 the questions about patient safety and working  
15 conditions?

16 MR. ELSNER: Objection.

17 A. Well, I think they considered all  
18 of the factors when they answered these  
19 questions.

20 Q. And some of them specifically  
21 commented about COVID and the pandemic, right?

22 A. Yes, they did.

23 Q. So we know that some pharmacists  
24 were thinking specifically about COVID when  
25 they took the survey, right?

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1           A.     I think you would have to have  
2     that in the back of your mind. Some  
3     pharmacists responded very positively about  
4     their work environment. It wasn't all a  
5     negative compilation of problems. There were  
6     people that were very satisfied with their  
7     work environment and had a very good  
8     understanding of what patient safety meant  
9     where it is that they practiced. Again, you  
10    can't overgeneralize because there are a wide  
11    range of responses that were provided.

12           Q.     You can't overgeneralize the  
13    responses and generalize them to the working  
14    conditions at all Ohio pharmacies, right?

15           MR. ELSNER: Objection.

16           A.     That wasn't the intent or purpose  
17    of the survey. The survey wasn't to do any  
18    kind of generalization. It was just to do an  
19    assessment of what the factors are from the  
20    perception of a pharmacist. And I think one  
21    of the real positive components of this survey  
22    and this whole methodology was it was  
23    conducted by the Ohio Board of Pharmacy --  
24    excuse me. And the Ohio Board of Pharmacy has  
25    oversight over each and every pharmacist and

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1       pharmacy that was represented in the study  
2       sample, so that gives a lot of validity to  
3       pharmacists viewing how they were going to  
4       respond. They were hoping that what they were  
5       going to say might make a difference in the  
6       outcomes of how they practice their  
7       profession.

8           Q.     Is that an assumption that you're  
9       making or is that part of a scientific method  
10      in analyzing surveys?

11          A.     It's a funded scientific method.  
12        You're looking at who is doing the survey, why  
13       does that individual or individuals or  
14       organization that is doing the survey have  
15       some credibility with who they're asking the  
16       questions of, does it give some validity and  
17       reliability to the results that you find, and  
18       I think in this case it certainly does.

19          Q.     Are you relying on any evidence  
20       that suggests that a regulatory body issuing a  
21       survey is going to garner more valid or  
22       truthful responses from the survey  
23       participants than another organization would?

24          A.     I think that if you look at the  
25       studies that have been done that have been

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1 published in the literature, those that come  
2 from that type of organization have an  
3 enhanced validity associated with them.

4 Q. You say that Dr. Selzer is not a  
5 pharmacist and doesn't have pharmacy  
6 expertise, but you agree that she was not  
7 asked to provide an opinion on the operation  
8 of pharmacies, right?

9 MR. ELSNER: Objection.

10 A. But if she was to evaluate a  
11 survey that was done to look at pharmacy  
12 working conditions, she didn't have to be a  
13 pharmacist, she didn't have to have pharmacy  
14 expertise, but she should have had some type  
15 of an appreciation of what the workplace  
16 environment was for the different type  
17 pharmacists that were going to be surveyed in  
18 this particular series of surveys.

19 Q. Did you get from her report that  
20 her opinion was that opioid dispensing is not  
21 part of the practice of pharmacy? Does she  
22 say that somewhere?

23 MR. ELSNER: Objection.

24 A. I don't believe she said that in  
25 her report, no.

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1           Q.     And she wasn't asked to look at  
2 the responses and decide whether or not she  
3 thought they were concerning, did she -- was  
4 she?

5           MR. ELSNER: Objection.

6           A.     She should have looked at who was  
7 being asked these questions, where they  
8 practice, what the different types of practice  
9 environments were. And it wouldn't take  
10 somebody a month to do this, okay. It would  
11 have taken a very defined short period of time  
12 to at least get an assessment of what's the  
13 metric, how does the metric impact what it is  
14 that you do, what does the Ohio Controlled  
15 Substance reporting system -- what does that  
16 do, why is that in place. You wouldn't have  
17 to spend a month doing it. You should at  
18 least have an appreciation of what the  
19 questions were being asked for and what the  
20 respondents might be responding as a basis for  
21 their responses.

22          Q.     You just told me what you think  
23 she should have done, but what I asked you is  
24 she wasn't asked to look at the responses and  
25 decide whether or not she thought they were

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1 concerning, was she?

2 MR. ELSNER: Objection.

3 A. She was asked to evaluate the  
4 survey, okay, and if she was asked to evaluate  
5 the survey, she should have taken the  
6 initiative to find out what it is that was  
7 being sought in the survey, and she did not do  
8 that.

9 Q. She wasn't asked to form any  
10 opinions about what metrics are and what it  
11 means that pharmacists said metrics impact  
12 patient safety, was she?

13 MR. ELSNER: Objection.

14 A. She wasn't asked that, but when  
15 she read the responses that dealt with  
16 metrics, why didn't she look at what a metric  
17 is, why didn't she ask pharmacists how metrics  
18 impact what they do and how they do it? She  
19 didn't take any effort to find out what that  
20 concept meant, period.

21 Q. And that would be part of a  
22 methodology in understanding your survey  
23 design?

24 MR. ELSNER: Objection.

25 A. In my estimation, that's what she

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1 should have done if she was going to evaluate  
2 the worth, benefit and efficacy of a survey  
3 that she was supposed to evaluate on its net  
4 worth.

5 Q. Was she evaluating it from a  
6 pharmaceutical perspective or was she looking  
7 at it from purely a survey expertise and a  
8 survey design?

9 MR. ELSNER: Objection.

10 A. She was looking at this as a  
11 pollster. She didn't have the expertise in  
12 survey research to do what she was asked to  
13 do. That doesn't mean that she isn't an  
14 absolute authority on political polling. That  
15 wasn't what she was asked to do. She was  
16 asked to do something that she didn't have any  
17 expertise in. Before she responded that she  
18 was going to do it or if she did do it, she  
19 should have at least found out what are the  
20 issues that might be impacting what it is this  
21 survey is seeking to find.

22 Q. Page 19 of your report -- if you  
23 can go there -- you state that, "Where  
24 difficult questions exist over whether to  
25 dispense a controlled substance, corporate

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1       pharmacy policies and expectations in large  
2       chains conflict with pharmacists'  
3       corresponding responsibilities and due  
4       diligence duties"; is that right?

5                    MR. ELSNER: Can you just tell us  
6       where you're at? Sorry.

7                    MS. WOHL: Yeah. One second.

8                    In the middle of that first full  
9       paragraph, the question starts "Where  
10      difficult questions exist."

11                  MR. ELSNER: Thank you.

12                  Q. And you bring in pharmacy policies  
13      and expectations.

14                  Do you see that?

15                  A. Yes, I do.

16                  Q. What corporate policies are you  
17      talking about here?

18                  A. Talking about metrics. How  
19      quickly do you have to dispense a prescription  
20      within tenths of a second, how many  
21      prescriptions do you have to dispense in a  
22      particular period of time, and are you  
23      rewarded or not rewarded based upon how well  
24      you meet these assigned capabilities that are  
25      put on you by a national chain such as Kroger,

1       whose responsibilities and requirements don't  
2       change from Ohio to Pennsylvania. They're  
3       exactly the same from state to state to state.  
4       So those expectations for metrics, for making  
5       sure that you have some people out the door  
6       within a defined period of time, that directly  
7       conflicts with pharmacists' due diligence  
8       capabilities.

9                   And it got to the point in some of  
10      the responses from the Kroger pharmacists that  
11      they had to alter their data to make it appear  
12      like they were doing better than they were  
13      supposed to be doing. There was pressure at  
14      the corporate level to do that. That is  
15      unbelievably unethical to put that kind of  
16      pressure on a pharmacist, because if something  
17      happens and that is found out, who's going to  
18      be nailed? It's going to be the pharmacist  
19      that's going to be nailed. They did this  
20      wrong. They did that wrong. If somebody is  
21      telling them they have to meet this quota,  
22      they have to have this level of -- of  
23      satisfaction, if they alter that, that's going  
24      to impact everything that they do in the  
25      future. They can't even practice their

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1 profession if they're -- if they're found out  
2 to have done that.

3 So those are the kinds of things  
4 that I'm referring to here, to the large chain  
5 expectations. It's absolutely unbelievable  
6 that you would expect somebody to get rid of a  
7 patient, so to speak, within a defined period  
8 of time and deal with your next patient. What  
9 if somebody in your family is 85 years of age  
10 and they take ten medications and they get a  
11 new prescription filled? Are you supposed to  
12 get them out the door in two minutes without  
13 talking to them, listening to them, asking  
14 them how you can help them? That's what I'm  
15 talking about when I mentioned that in this  
16 paragraph.

17 Q. I understand you're upset by these  
18 comments. Going back to the purpose of the  
19 survey, can you tell by those Kroger-specific  
20 comments that that is a general working  
21 condition in Ohio?

22 A. If you're looking at me to  
23 quantify it and tell you how many did this, to  
24 me that's irrelevant, if there's one  
25 pharmacist, if there's two pharmacists, if

1       there's ten pharmacists. And it wasn't just  
2       Kroger pharmacists that said this. It was --  
3       all kinds of other individuals talked about  
4       the impediments of metrics, whether you're  
5       with Walgreens or CVS, Rite Aid, you name it.  
6       It's deleterious. It doesn't matter how many  
7       there were. What matters to me is that there  
8       were any at all because that's going to impact  
9       how you're going to take care of the most  
10      important person in all this, and that's the  
11      patient.

12           Q.     Which corporate policies did you  
13      review when you came to this conclusion in  
14      that sentence about corporate pharmacy  
15      policies?

16           A.     I looked at some of the Kroger  
17      requirements to get perhaps rated better, what  
18      you had to do to get rated better. You had to  
19      make visits to physicians. So many had to be  
20      done. You had to have so many filled within a  
21      defined period of time. You had to give so  
22      many vaccinations. This is counterproductive  
23      to taking care of patients that need to be  
24      taken care of on an individual basis.

25           Q.     Did you ask for any additional

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1 policies to look at?

2 A. Those are all I needed to see,  
3 Ms. Wohl, to see that there was something  
4 wrong in the -- in the water.

5 Q. Is there anything --

6 A. I didn't need to see 15 other  
7 things. That's all I needed to see was this  
8 worksheet that listed how you're supposed to  
9 get evaluated better, and the fact that if you  
10 didn't do it, you're supposed to make up the  
11 data in Kroger to look better.

12 Q. Do you know the date of the policy  
13 that you reviewed?

14 A. I don't know the specific date.  
15 I'd have to -- I'd have to go through the  
16 report to find it.

17 Q. Do you know whether that policy  
18 was in place at the time pharmacists responded  
19 to this survey?

20 A. I don't know.

21 Q. Would that make a difference in  
22 your estimation of these corporate policies?

23 A. It would make no difference  
24 whatsoever, because if the policy was in place  
25 two years ago, five years ago, ten years ago,

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1       the pressure on that pharmacist as they've  
2       been in that same environment is still going  
3       to be there; how am I being evaluated, is this  
4       policy going to change, is it going to alter  
5       from year to year or month to month. That's  
6       in play, period, regardless of the time.  
7       That's important to me.

8           Q.     So I understand that you have  
9       opinions on Kroger's policies with respect to  
10      metrics based on the document that reviewed,  
11      the worksheet you're referring to; is that  
12      right?

13           MR. ELSNER: Objection.

14           A.     It's based on that as well as the  
15      verbal comments, the written comments where  
16      people talk about how deleterious metrics were  
17      to their ability to practice in a safe  
18      environment, the added pressure, the added  
19      stress, the fact that they couldn't meet these  
20      metrics, they couldn't take care of patients.  
21      So it was a double negative component.

22           Q.     And I take it from your testimony  
23      that your opinion is that you agree with those  
24      comments made by the couple of Kroger  
25      pharmacists about metrics, with respect to the

1       metrics policies; is that right?

2           A.     I certainly agree with what they  
3     said and how they said it, yes. They had  
4     absolutely no reason to lie. They were  
5     reporting this to somebody that oversees their  
6     ability to practice their profession. Why  
7     would they lie about it? They were trying to  
8     get help. They were trying to get things done  
9     to make things better. Why would they lie  
10    about that? Why would so many people lie  
11    about that?

12          Q.     I'm not asking whether or not you  
13    thought they were truthful. I'm asking what  
14    your opinion of Kroger's policies are.

15           MR. ELSNER: Objection.

16          A.     I think the policies are  
17    despicable. They have absolutely no benefit  
18    for patients at all.

19          Q.     And is there anything else that  
20    you would need to review to form a more  
21    certain opinion on Kroger's policies?

22           MR. ELSNER: Objection. Vague.

23          A.     Ms. Wohl, I would look at the  
24    Likert responses on how they feel their  
25    practice environment is unsafe, how they don't

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1 have the staff that they need, the staff is  
2 constantly being diminished, the staff that is  
3 hired doesn't have the qualifications. I'm  
4 not trying to criticize somebody that doesn't  
5 have qualifications. I'm saying you don't put  
6 somebody in a position to take care of things  
7 if they don't have the qualifications to do  
8 that. That's an incredible amount of  
9 pressure. Why is that a pressure on  
10 pharmacists? Because I don't care how many  
11 technicians you have and how capable they are  
12 or incapable they are, everything that's done  
13 by that technician, responsibility for making  
14 sure that is safe, falls on who? It falls on  
15 the pharmacist that's there on duty, in charge  
16 at that point in time. So they have  
17 incredible responsibility for their own  
18 actions as well as every action that's done by  
19 people that work with them that don't have the  
20 pharmacy degree.

21 Q. Do you have any opinions on any  
22 other Kroger policies?

23 MR. ELSNER: Objection.

24 A. I sure do.

25 If you have a salary-based

1 employee that has a 40-hour workweek but that  
2 individual has to work 60 hours a week without  
3 being paid in order to take care of patients,  
4 there's something wrong with that policy. If  
5 you have somebody that is filling 300  
6 prescriptions in a defined period of time  
7 without help or assistance and you can't get  
8 additional staff, you can't get additional  
9 support, I certainly feel that that's an  
10 inappropriate policy. It doesn't matter if  
11 it's focused simply on Kroger's. It's CVS.  
12 It's Walgreens. It's Rite Aid. Pick your  
13 favorite chain. That's what the problem is.  
14 People are not getting the care that they need  
15 in pharmacies. But if you're looking at  
16 Kroger specifically, having that kind of a  
17 policy in place makes no sense whatsoever for  
18 patient safety, which is what Kroger is  
19 supposed to be all about. It flies in the  
20 face of what their, quote, unquote, focal goal  
21 is.

22 Q. Where are these policies you're  
23 talking about?

24 A. The policies were expanded upon by  
25 individual pharmacists, okay. It might not be

1 a written policy, but if you're a pharmacist  
2 and you're trying to take care of patients and  
3 you can't do it within 40 hours but you have  
4 to do it in 60 hours, I don't care if Kroger  
5 has a policy or not. If that's the  
6 expectation, that you want to take care of  
7 people in a safe environment, you're going to  
8 do it until you just can't do it anymore. So  
9 if you have somebody that's salary and they  
10 work extra, pay them overtime, don't diminish  
11 the staffing. And many, many of the Kroger  
12 pharmacists talked about diminished staffing,  
13 cutting back on staff, inability to get extra  
14 help. That is to me -- whether or not it's a  
15 written policy, it's a policy that people had  
16 to abide by.

17 Q. So you are looking at the survey  
18 comments with respect to Kroger and  
19 interpreting those as Kroger-wide policies?

20 A. I'm looking at individual  
21 responses that Kroger pharmacists made about  
22 metrics, and those individual comments -- I  
23 don't care if there were ten or 20 or 30, if  
24 there were five of them, if there were four of  
25 them, that indicates to me a concern.

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1           Q.       Does it indicate a corporate  
2 policy?

3           A.       If people have metrics that they  
4 can't abide by but they're imposed upon them,  
5 that's a corporate policy. You have to have  
6 metrics in order to be evaluated positively.  
7 And if you don't have those metrics, you're  
8 supposed to make them up to look like you're  
9 better than you actually are.

10          Q.       I understand your opinion on  
11 Kroger's metrics, what you assume them to be,  
12 but you mentioned two other policies, and one  
13 is somebody having to work a 60-hour workweek  
14 and another of somebody filling 300  
15 prescriptions without staff. What policies  
16 are those?

17                    MR. ELSNER: Objection. Asked and  
18 answered.

19          A.       If you have metrics that you have  
20 to fill prescriptions within a defined period  
21 of time, and you have 300 prescriptions that  
22 you have to fill and you don't have the  
23 staffing and you don't have the support,  
24 there's a policy there that needs to be fixed.  
25 And the policy is that you expect people to do

1       too much with too little and do it real quick  
2       or you're going to get docked.

3           Q.     Drawing these conclusions from the  
4       comment section of these surveys, is this  
5       typically how you analyze survey results?

6           A.     I'm sorry. I didn't quite hear  
7       the first part of your question.

8           Q.     I said drawing conclusions like  
9       these from the survey comments, is this  
10      typically how you analyze survey results?

11          A.     When I analyze survey results, I  
12       look at every part of the survey; how it was  
13       constructed, what it was supposed to measure,  
14       and what the results are supposed to be used  
15       for. So when I looked at the written  
16       comments, did they have any validity with what  
17       people were saying in their Likert scale  
18       responses. So when they talked about unsafe  
19       work conditions, not enough staffing, and then  
20       you combine that with what I found and read in  
21       the verbal comments, it gives credibility to  
22       the entire survey. It makes it valid. It  
23       makes it reliable. I don't look at these  
24       individually as item A or item B. I look at  
25       item A plus item B equals what.

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1           Q.     If you can turn to page 20 of the  
2 report. At the top of the page there's a  
3 sentence that starts out "Additionally," and  
4 you state that "the pharmacy regulations and  
5 practice standards apply the same to all  
6 pharmacies."

7                   Do you see that?

8           A.     Yes, I do.

9           Q.     What is your basis for this  
10 comment?

11          A.     Okay. If you look at what the  
12 practice standards are for the practice of  
13 pharmacy in an institutional setting, in a  
14 long-term care setting, in an independent  
15 retail pharmacy setting, the environments are  
16 different, the practice components might be a  
17 bit different, but the expectations regarding  
18 regulatory components are the same, that you  
19 have things happening in a safe and  
20 appropriate manner.

21          Q.     You go on to say that "dispensing  
22 work flows are similar no matter the  
23 pharmacy." What's your basis for that  
24 comment?

25          A.     I'm sorry. Where do you see that?

1           Q.     At the end of that sentence that  
2 begins "additionally," the last phrase is  
3 "dispensing work flows are similar no matter  
4 the pharmacy" on page 20.

5           A.     So what's supposed to happen when  
6 a prescription is filled, so how is it  
7 processed, how is it packaged, how is it  
8 delivered to the patient, what is the patient  
9 told about the medication. If the work flow  
10 expectations for that dispensing is done in a  
11 community pharmacy or a chain setting or a  
12 food market-based pharmacy or a hospital  
13 outpatient setting, those regulations are  
14 applicable across the board regardless of what  
15 the environment is. Those are state  
16 regulations on how pharmacy needs to be  
17 practiced in a particular state. It doesn't  
18 matter what the environment is.

19           Q.     So when you talk about work flow,  
20 you're talking about the regulations and the  
21 law that pharmacies have to follow when they  
22 dispense, right?

23           A.     That's correct.

24           Q.     And is that also what you're  
25 referring to when you talk about the

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1 standardization of large chain pharmacy work  
2 loads?

3 A. Where do you see that?

4 Q. That's the very next sentence,  
5 page 20.

6 A. And I think what I'm referring to  
7 there is how the respondents from the Likert  
8 scale standpoint responded if they were in a  
9 food market-based pharmacy or a large chain  
10 environment versus independent pharmacists or  
11 institutional practices. So hospital  
12 pharmacists wouldn't have this kind of concern  
13 and they said I'm glad I don't work in a chain  
14 or I'm glad I don't have those constraints. I  
15 have this ability to report to a supervisor  
16 that there are unsafe working conditions and  
17 that supervisor has to deal with the issue  
18 rather than have it being ignored like you  
19 might see in a chain environment.

20 Q. What's your basis for saying that  
21 you would see these concerns ignored in a  
22 chain environment?

23 A. Based upon what the verbal  
24 responses were and the fact of the Likert  
25 scale items where they indicated they didn't

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1 have anybody that they could talk to about an  
2 issue, A, B, C or D.

3 Q. But we're talking about, when you  
4 say that, the respondents were not making  
5 generalizations as to all Kroger pharmacies or  
6 Ohio pharmacies, right?

7 MR. ELSNER: Objection.

8 A. Again, there are some pharmacists  
9 in those pharmacy environments that were  
10 perfectly satisfied with what they were doing.  
11 I just think that because there was a concern  
12 raised, on an average based on percentage of  
13 respondents in Likert scale items, then you  
14 couple in the verbal responses, that adds  
15 validity and reliability to what the survey  
16 was doing.

17 MS. WOHL: Can I have the last  
18 question I asked read back, please?

19 (Record read.)

20 Q. Could you answer that,  
21 Dr. Fincham.

22 A. Again, that's not what I'm saying  
23 because some individuals felt that they had a  
24 really nice work environment. There was a  
25 separation -- you know, regardless of where

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1 the individual practiced, they weren't all the  
2 same responses.

3 Q. Okay. I think the answer to that  
4 question is no, you were not making  
5 generalizations. I just wanted to make sure I  
6 understood what you were saying.

7 MR. ELSNER: Objection. Strike  
8 the colloquy. That's not a question to the  
9 witness and that's not what the witness said.

10 Q. Okay. I'll ask you again. Can  
11 you generalize the negative comments about  
12 Kroger to all Kroger pharmacies?

13 MR. ELSNER: Objection.

14 A. My point is that if some  
15 pharmacists in Kroger express this concern,  
16 that should be a major concern for Kroger  
17 corporate. And, in fact, because of these two  
18 studies, the 2021, the 2020 study done by the  
19 Ohio Board of Pharmacy, what did Kroger do?  
20 They did their own study of their own  
21 pharmacists and the similar results were  
22 found. So, in my estimation, Kroger felt that  
23 this was a significant issue that they needed  
24 to look at within their own group of  
25 pharmacies and pharmacists only. So whether

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1 or not I generalized it, Kroger did. They  
2 felt they needed to analyze their environments  
3 for their pharmacists.

4 Q. In the next paragraph you quote  
5 Dr. Selzer's opinion that it would be an  
6 unsubstantiated leap to believe that the  
7 answers to the survey questions reflect  
8 pharmacists' specific concerns with dispensing  
9 of opioids, and you follow that with it would  
10 be an unsubstantiated leap to suggest that a  
11 pharmacist would not have controlled  
12 substances and opioids in mind when answering  
13 these questions, right?

14 A. That's correct.

15 Q. Then you disagree with  
16 Dr. Selzer's opinion that you cannot take the  
17 results and -- from this survey and assume  
18 that pharmacies -- pharmacists were talking  
19 specifically about their concerns with  
20 dispensing opioids?

21 A. I don't agree with her statement.

22 Q. Okay. And you are saying there  
23 that it's your opinion that they did have  
24 opioid dispensing in mind when answering these  
25 questions; is that right?

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1           A.     That's one of many factors that  
2 they had in mind. If we go back to Table 1,  
3 those factors are not mutually exclusive.  
4 They're all inclusive of what pharmacists  
5 consider when they practice on a day-to-day  
6 basis, on an hour-to-hour basis. It's  
7 constantly impacting them in the back of their  
8 mind.

9           Q.     So within Table 1 is a whole list  
10 of things that's constantly impacting them in  
11 the back of their mind that they would have in  
12 mind when talking about their practice, but we  
13 can't isolate any of those one tasks or duties  
14 and say that these results were specific to  
15 any one of those; is that right?

16           MR. ELSNER: Objection.

17           A.     I don't know why you'd want to  
18 separate those out, because the pharmacist  
19 sure doesn't. If they can't take a break, if  
20 they can't go to the bathroom, how are they  
21 going to do those other 15 items and do them  
22 efficiently, effectively and with the focus of  
23 the patient in mind. If they can't have a  
24 work break, if they can't eat lunch, if  
25 they're a diabetic, how are they supposed to

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1 handle that stuff? They can't. So it's not  
2 fair to just separate one thing out of  
3 another. All those factors impact them each  
4 and every time each and every minute of their  
5 practice site. The biggest worry the  
6 pharmacists have is am I going to make a  
7 mistake that's going to hurt a patient, and  
8 then, secondly, is that going to make my  
9 ability to practice as a pharmacist impossible  
10 because I'm going to be fired, I'm going to be  
11 let go, I'm going to be released from my  
12 responsibilities. They think about that from  
13 minute one to the last minute they leave the  
14 door.

15 Q. Am I correct in saying that  
16 patient safety encompasses opioid dispensing  
17 and, therefore, it's reasonable that  
18 pharmacists would generally have all aspects  
19 of patient safety in mind when answering  
20 patient safety questions?

21 A. I absolutely agree with that a  
22 hundred percent.

23 Q. So what I'm hung up here on is the  
24 word "specific." You know, specific to me  
25 means isolating any one of those and saying

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1 the comments and the answers are specific to  
2 any one isolated task or duty. Are you saying  
3 that these comments and survey results reflect  
4 specific concerns with opioid dispensing?

5 A. They reflect all the concerns.  
6 Included in those concerns is opioid  
7 dispensing. You can't separate that out from  
8 the concern that pharmacists have. If you  
9 have metrics that you have so many  
10 prescriptions that you have to fill and you  
11 have a patient present with an opioid  
12 prescription and you have to go through the  
13 OARRS system, you have to look at whether or  
14 not they traveled so many miles, you can't  
15 separate it out, it's all inclusive, it  
16 impacts everything they do each and every  
17 minute of their practice day.

18 Q. When Dr. Selzer talks about  
19 breaking down survey results by demographics  
20 and how that might be useful, it's your  
21 opinion that that is not important here  
22 because pharmacy is gender neutral; is that  
23 right?

24 A. That's absolutely how I feel, yes.

25 Q. So it would be of no significance

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1 to you if more men than women answered in a  
2 certain way in this survey?

3 A. In my mind a pharmacist is a  
4 pharmacist regardless of what their gender is  
5 and their responsibilities are exactly the  
6 same.

7 Q. So as a survey expert, if the  
8 majority of the complaints were from younger  
9 pharmacists or male pharmacists, would that  
10 have no significance to you?

11 A. I think what was significant was  
12 the demographics that they did measure, so how  
13 long had somebody been in a practice  
14 environment, how many years have they  
15 practiced. Those are the things that are  
16 important to me. Whether or not somebody was  
17 25 or 65 doesn't have any impact whatsoever on  
18 how they're supposed to do what it is they're  
19 supposed to do to provide patient care and  
20 patient-safe environments.

21 Q. Is that your general view on  
22 demographics of survey respondents in, you  
23 know, the pharmaceutical area or just this one  
24 specifically?

25 MR. ELSNER: Objection.

1           A.       We're talking about the practice  
2       of pharmacy in the state of Ohio. If we're  
3       looking at dosing of men versus dosing of  
4       women, dosing of somebody that's 85 versus  
5       somebody that's 15, the demographics and age  
6       and gender are really crucial, but if you're  
7       talking about the practice of pharmacy, it  
8       doesn't matter what somebody's gender is, it  
9       doesn't matter how old they are. The  
10      responsibilities, the duties, the expectations  
11      are exactly the same. So it depends upon the  
12      study and the type of study that you're  
13      assessing. And, again, I don't want to be  
14      overly critical of Dr. Selzer, but she has no  
15      idea of how pharmacy is practiced or what the  
16      expectations are. It doesn't mean she's not a  
17      world class, famous expert on polling. She  
18      doesn't know anything about pharmacy so she  
19      doesn't have the ability in my estimation to  
20      make an evaluation of why demographics were  
21      important.

22           Q.       We've covered some of this next  
23      area in our talks about generalization and  
24      whether or not you can take the survey results  
25      and make conclusions about the

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1 non-respondents, but I want to ask it in these  
2 terms. You say that the question of whether  
3 the results of this survey can be extrapolated  
4 to all pharmacists is not very relevant,  
5 correct?

6 A. That wasn't the purpose of the  
7 study, no, ma'am.

8 Q. Okay. So it is not relevant  
9 whether the experience of the pharmacists who  
10 responded to the survey represents the  
11 experience -- the experiences of all  
12 pharmacists in Ohio?

13 MR. ELSNER: Objection.

14 A. Again, the premise of the study  
15 was to get an assessment of workplace safety  
16 from the pharmacist's point of view.

17 Q. Of general workplace conditions,  
18 correct?

19 A. All workplace conditions, yes.

20 Q. On page 23 --

21 THE WITNESS: Would it be possible  
22 to take a break, please?

23 MS. WOHL: Yes. Let's take a  
24 break. We can go off the record.

25 THE VIDEOGRAPHER: Off the record,

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1 1 : 37 .

2 (Recess had.)

3 THE VIDEOGRAPHER: On the record ,

4 1 : 47 .

5 BY MS. WOHL:

6 Q. Dr. Fincham, did you have any  
7 experience with Kroger pharmacies prior to  
8 reading the results of these surveys?

9 A. No, I did not.

10 Q. Have you ever known any pharmacist  
11 who worked at Kroger?

12 A. Yes, I do.

13 Q. And what's the nature of your  
14 relationship with them?

15 A. Let me --

16 MR. ELSNER: Objection.

17 Go ahead.

18 A. When I was at the University of  
19 Kansas School of Pharmacy as a dean, I  
20 received a grant from the National Association  
21 of Retail Druggists to evaluate pharmacists'  
22 potential to enhance what it is they did and  
23 how they might be reimbursed for that. And  
24 one of the groups that I wanted to include to  
25 make sure that we were inclusive in the study

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1 design were pharmacists that worked at  
2 Dillons, and Dillons is wholly subsidized by  
3 Kroger, it's managed by Kroger. At that point  
4 in time the pharmacy director, Jane Siebert,  
5 was monitoring pharmacy services within the  
6 Dillons network, but still Kroger owned  
7 Dillons. So my impact through Jane Siebert,  
8 the pharmacist that participated in the study,  
9 was my interaction with Kroger pharmacists.

10                   So I was also asked to speak to  
11 the group of Kroger pharmacists that get  
12 together on an annual basis, to talk to them  
13 about the future of pharmacy.

14                   So that's my interaction with a  
15 Kroger subsidiary, but yet I considered it to  
16 be Kroger pharmacies and pharmacists.

17                   Q.     Can you tell me more about your  
18 experience in getting together with Kroger  
19 pharmacists to talk about the future of  
20 pharmacy?

21                   A.     At that time Ms. Siebert asked me  
22 to come to speak to the pharmacy group about  
23 what I perceived as the future of pharmacy and  
24 the opportunities for supermarket-based  
25 pharmacy to have a major impact in how

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1       pharmacy was practiced in the state of Kansas.

2           Q.     Did you form any opinions about  
3       Kroger pharmacies or pharmacists during these  
4       relationships?

5           MR. ELSNER: Objection.

6           A.     I have a very positive view of  
7       pharmacy and pharmacists, period, so I  
8       welcomed the opportunity to work with those  
9       Dillons pharmacists to help them realize that  
10      the University of Kansas School of Pharmacy  
11      was focused on them and their practice and to  
12      do what I could to make their practice better  
13      and enhanced. So my view of Kroger  
14      pharmacists through the Dillons group was very  
15      positive. It remains positive to this day.

16           Q.     On page 24 of your report --  
17      actually, it's the bottom of 23 and then on to  
18      24, that sentence. "The Board's  
19      characterization of the survey findings as  
20      reliable and 'striking' should be given  
21      substantial weight."

22                  Do you see that?

23           A.     Yes, I do.

24           Q.     So, in your opinion, the  
25      surveyor's findings are to be given

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1 substantial weight in analyzing the survey?

2 A. That's the view of the Ohio Board  
3 of Pharmacy, looking at this survey and the  
4 results.

5 Q. And I'm asking for your opinion.  
6 What's the substantial weight that you're  
7 talking about giving these -- this view?

8 A. I think that the survey was valid,  
9 it was reliable, and I based my assessment of  
10 validity and reliability based upon other  
11 studies that were done in different states as  
12 well as the national survey of pharmacists'  
13 working conditions. They were very similar in  
14 the outcomes. Some of the questions were  
15 virtually the same. So the Kroger -- excuse  
16 me. The Ohio Board surveys were based upon  
17 other work that had been done in other states  
18 and it added, in my estimation, to the  
19 validity and how important the results were.

20 Q. Well, the substantial weight that  
21 you're talking about here is the Board's  
22 characterization of the survey findings as  
23 reliable and striking, so it doesn't sound  
24 like you're talking about these other surveys  
25 but it's the board's own assessment of its

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1 survey is what you want to give substantial  
2 weight. Am I reading that correctly?

3 A. Yes. It's how the board viewed  
4 the survey results in 2020 as well as 2021.

5 Q. Okay. So the fact that the Ohio  
6 Board of Pharmacy found the surveys to be  
7 reliable is a significant aspect of your own  
8 conclusion that the surveys are indeed  
9 reliable?

10 A. It's one component of how I  
11 assessed how reliable or valid the survey was,  
12 yes.

13 Q. The surveyor's own opinion of its  
14 survey?

15 A. That added to my ability to look  
16 at this as being a valid and reliable series  
17 of studies, yes.

18 Q. And you also seem to be saying  
19 that the Board's actions in response to the  
20 survey validated the survey results; is that  
21 correct?

22 A. Yes.

23 Q. So how would subsequent actions of  
24 a surveyor make survey results more reliable?

25 MR. ELSNER: Objection.

1           A.     Ms. Wohl, if we go back to how  
2 surveys are initially constructed, you look at  
3 what it is you're going to examine, you look  
4 at what you're going to ask, and then you look  
5 at how are the results going to be used. And  
6 so, in my view, looking at this from that  
7 standpoint, when I see that the Board of  
8 Pharmacy took the results of this survey and  
9 started the process of trying to make  
10 recommendations on improving pharmacy practice  
11 indicates to me that this was a valid study,  
12 it was a reliable study, and it was certainly  
13 carried out from a design standpoint and a  
14 construction standpoint in a very appropriate  
15 manner.

16           Q.     So if the Board had not taken  
17 actions in response to the survey, would that  
18 have made the survey results less reliable?

19           MR. ELSNER: Objection.

20           A.     That's a -- that's a question that  
21 I really can't answer. I can only talk about  
22 what was done and how it was done and why that  
23 made my assessment of this whole survey  
24 process as being very, very valid.

25           Q.     Don't you need to make sure you

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1 have valid data before you take appropriate  
2 actions?

3 MR. ELSNER: Objection.

4 A. I don't mean to be disrespectful.  
5 That's a rhetorical question. I don't know  
6 what it is that you're trying to examine or  
7 what you're talking about. Can you be more  
8 specific, please?

9 Q. Well, let's say the data from the  
10 survey is biased or unreliable in some way.  
11 If the organizations are acting on biased  
12 data, then they're making decisions on flawed  
13 data, correct?

14 A. And that's where Dr. Selzer and I  
15 agree, that this was a series of valid  
16 questions, it was appropriate for the Board to  
17 do these surveys, there was no evidence  
18 whatsoever that there was any bias or that  
19 there was anything that was done to alter the  
20 data to have it to -- to look different than  
21 it was actually supposed to appear.

22 Q. But my question is a little  
23 different. I guess what I'm asking here is  
24 that you've got survey results that can't be  
25 generalized to a broader population. They are

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1 the results of the people who took the survey  
2 and that's all. If the Ohio Board of Pharmacy  
3 is acting on survey results that are not  
4 representative of a broader population, then  
5 is the data or the action -- are the actions a  
6 result of flawed data?

7 MR. ELSNER: Objection.

8 A. I respectfully disagree with your  
9 whole premise. That's not the purpose of what  
10 this study was intending to do. It wasn't to  
11 generalize pharmacy practice. It wasn't to  
12 generalize a specific region of the state of  
13 Ohio. It was simply to get an appreciation of  
14 what the workplace environment and factors  
15 impinging on patient safety were. And the  
16 Board took those results -- they didn't bias  
17 those results. They didn't alter those  
18 results. They looked at the results that were  
19 both Likert scale in origin as well as the  
20 verbal written responses and tried to make  
21 recommendations based upon what those  
22 particular studies found. So how they  
23 processed this through from start to finish in  
24 my mind was very, very appropriate.

25 And to amplify that, if this was

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1 looked at as something that was positive in  
2 these two years, why would Kroger then do a  
3 similar study if they didn't feel that this  
4 had some validity and needed to be done and  
5 needed to be expanded upon? That adds to me  
6 the whole issue of how this was really  
7 credible. It was important to Kroger, as well  
8 it should be.

9 Q. What exactly in your report here  
10 is rebutting something that Dr. Selzer wrote?

11 MR. ELSNER: Objection.

12 A. I'm going to respectfully request  
13 that you would have to go through this page by  
14 page. I was very specific in my assessment of  
15 why Dr. Selzer was wrong in some of her  
16 assessments. And if you want me to go through  
17 this page by page, I can certainly do that,  
18 but basically she didn't review the policy  
19 recommendations of the workload advisory  
20 committee or other steps took in response to  
21 the survey results. This is on page 24. She  
22 should have done that.

23 Q. Does that relate to an opinion  
24 that she had that you are rebutting? I know  
25 you think that she should have done more.

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1                   MR. ELSNER: Whoa, whoa. I'm  
2 going to raise an objection. I'm not sure  
3 that's a question.

4                   Q. Okay. Does that relate to an  
5 opinion that she had that you are rebutting?  
6 That is the question.

7                   A. And, again, respectfully, we can  
8 go through this page by page and I can -- I  
9 went through why I didn't agree with  
10 Dr. Selzer. It's no criticism of her as a  
11 pollster. It's just she didn't do what she  
12 should have done to analyze these surveys. So  
13 her assessment of the survey in general was  
14 totally inappropriate, it was wrong.

15                  Q. I don't think we need to go  
16 through it page by page, but isolating what  
17 you're saying here on page 24 of the things  
18 that she did not do, like review the policy  
19 recommendations of the workload advisory  
20 committee or other steps that the Board of  
21 Pharmacy took in response to the survey  
22 results, you believe she should have done  
23 those, correct?

24                  A. Yes.

25                  Q. So what part of her opinion

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1 relating to that are you rebutting?

2 MR. ELSNER: Objection. I'm  
3 sorry. I don't understand the question.

4 If you understand the question,  
5 you can answer. I don't understand it.

6 A. I did not understand the question  
7 and I don't think it's fair to expect me to  
8 cherrypick one particular sentence in one  
9 particular paragraph on page 24 and make my  
10 assessment of why I think that what she did is  
11 invalid. It's the whole report, all the  
12 pages --

13 Q. Everything?

14 A. -- that in my mind refute what  
15 Dr. Selzer stated about this study and study  
16 process.

17 Q. At the end of your report, on page  
18 30, in the middle of the second paragraph, if  
19 I can draw your attention to a sentence there.

20 A. What page?

21 Q. Page 30.

22 You state that "The survey  
23 information, when placed in the context of  
24 regulatory obligations of controlled  
25 substances, pharmacy practices and ongoing

1 opioid epidemic, were persuasive."

2                   So let me ask you first about  
3 placing the survey information in specific  
4 contexts. You agree that it wasn't  
5 specifically targeted to the regulatory  
6 obligations of controlled substances, pharmacy  
7 practice and opioid epidemic, correct?

8                   A. I agree with that.

9                   Q. Okay. So you have to place it in  
10 that context, and that's something you're able  
11 to do with your pharmacy expertise; is that  
12 right?

13                  A. And, respectfully, we could take  
14 ongoing opioid epidemic out and talk about  
15 dispensing cancer chemotherapy or dispensing  
16 drugs that have known interactions with other  
17 drugs. So you could -- you could go through  
18 any number of things and talk about why it was  
19 persuasive. But from the standpoint of  
20 controlled substances, it certainly is  
21 applicable.

22                  Q. And you sort of answered my next  
23 question, which was you can put this  
24 information into other contexts, correct?

25                  A. Yes, you can.

1           Q.     And make assumptions and draw  
2 conclusions; is that right?

3           A.     I'm not making an assumption. I'm  
4 basically concluding that that's the case.

5           Q.     Okay. Dr. Selzer, in her report,  
6 says that some pharmacists may have concerns  
7 about opioids but this survey did not purport  
8 to measure that. Do you disagree with that?

9           A.     That's what Dr. Selzer said.

10          Q.     Do you disagree with what she is  
11 saying there?

12          A.     Can you ask the question? I'm  
13 sorry. I don't quite understand what you're  
14 asking me.

15           MR. ELSNER: She's asking you  
16 whether you agree or disagree with her  
17 opinion, but go ahead and ask the question  
18 again.

19          Q.     Dr. Selzer says that some  
20 pharmacists may have concerns about opioids  
21 but the survey did not purport to measure  
22 that. Do you agree or disagree with that?

23          A.     I agree with that.

24          Q.     And she states that we cannot be  
25 certain that the data reflect a larger pool

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1 than the pharmacists who responded. Do you  
2 agree or disagree with that?

3 MR. ELSNER: Objection.

4 A. I think we can agree with that.  
5 We could also agree that there were  
6 pharmacists that didn't respond that would  
7 have had very similar responses, but that  
8 wasn't the purpose of the study.

9 Q. Explain that opinion to me, we can  
10 agree that pharmacists who didn't respond had  
11 very similar -- would have had very similar  
12 responses.

13 A. They could have had similar  
14 responses. They could have had dissimilar  
15 responses. That doesn't impact at all the  
16 validity of this study, which was to get a  
17 general perception of workplace safety and  
18 conditions that impacted pharmacists' ability  
19 to practice safely.

20 Q. Okay. I want to make sure I  
21 understand that statement. We don't know what  
22 the pharmacists who did not respond would have  
23 said, correct? Is that what you're saying?

24 A. That's correct.

25 Q. Okay. The Oregon Board of

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1 Pharmacy survey that was sent as a supplement  
2 to the materials you considered, did you  
3 consider this survey before you wrote the  
4 opinion or in writing your opinion?

5 A. It was after the fact.

6 Q. And does this survey impact your  
7 opinions?

8 A. It -- do we have a copy of that  
9 that I could examine? I don't have a copy of  
10 that in front of me.

11 Q. Okay. It didn't make it into the  
12 exhibit folder.

13 MR. ELSNER: We can make it --  
14 since it was produced late, I'm happy to -- do  
15 you want to go off the record for a minute?  
16 We can pull that for him.

17 MS. WOHL: Sure.

18 MR. ELSNER: Do you want to do  
19 that now?

20 MS. WOHL: Yeah, let's go ahead  
21 and do that.

22 THE VIDEOGRAPHER: Off the record,  
23 2:05.

24 (Recess had.)

25 THE VIDEOGRAPHER: On the record.

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1 BY MS. WOHL:

2 Q. Dr. Fincham, do you have the  
3 Oregon Board of Pharmacy survey in front of  
4 you?

5 A. Yes, I do.

6 Q. And this was the supplement that  
7 was sent to me as an additional material  
8 considered by you; is that correct?

9 A. Yes.

10 Q. When did you first review this?

11 A. I first saw it yesterday evening.

12 Q. And how did you come across this?

13 A. I was provided a copy here at the  
14 firm.

15 Q. By counsel?

16 A. Yes.

17 Q. And was the first time you  
18 reviewed this document yesterday evening?

19 A. That's correct.

20 Q. Do you have any additional  
21 opinions now that you've considered this  
22 survey report?

23 A. My opinions would remain the same  
24 as I indicated in my report.

25 Q. Does this Oregon survey or the

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1 report on it have any significance to your  
2 opinions in this case?

3 MR. ELSNER: Objection.

4 A. I think it just indicates that the  
5 findings of this survey done in 2011 are not  
6 that different than what was found ten years  
7 later in a different state.

8 Q. And can you explain that  
9 significance to me?

10 A. I said that it really wasn't  
11 significant from the data that was found in  
12 this study versus what was found a decade  
13 later. The results are very, very similar.  
14 This study did not have some of the  
15 demographic components that the two surveys  
16 that were reviewed for the State of Ohio had.  
17 So when they talk about practice site, they  
18 were very limited in what they indicated.  
19 There were just three particular sites as  
20 opposed to the study that was -- studies that  
21 were done in Ohio. They broke down the  
22 practice site. Here talking about the Table 3  
23 on page 8, they just say community chain.  
24 They don't break it down to food market-based  
25 pharmacy, et cetera.

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1           Q.     The fact that you say -- as you  
2 say, the results aren't that different between  
3 this 2013 survey in Oregon and the Ohio 2020  
4 and '21 surveys, does that have any bearing or  
5 support of any of your opinions in your report  
6 in this case?

7           MR. ELSNER: Objection.

8           A.     And, again, I indicated I didn't  
9 use this document in any way, shape or form in  
10 the formation of my report and the writing of  
11 such.

12          Q.     So it doesn't support your  
13 opinions even after the fact, it is just an  
14 ancillary document that you looked at?

15          MR. ELSNER: Objection.

16          A.     I think I'm repeating myself, but  
17 I think that this validates the findings that  
18 were done in the Ohio study, the Missouri  
19 study, and the national study that was done  
20 several years after this by the American  
21 Pharmaceutical Association.

22          Q.     And I apologize if you're  
23 repeating yourself. That is not what I heard  
24 from your prior answer. So this Oregon survey  
25 validates the results of all the other surveys

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1       that you mentioned in your report, including  
2       the Ohio Board of Pharmacy survey?

3           A.     It adds validity to the findings,  
4       yes.

5           Q.     And in what way?

6           A.     If you look at the qualitative  
7       results, you know, the responses that are on  
8       page 19, 20, talking about dissatisfaction  
9       with the changing pharmacy profession, those  
10      kinds of things -- if you look at the  
11      quantitative result, it's really -- you  
12      show -- again, this is just -- this is a  
13      Likert scale of three items, okay, where you  
14      have agree, neutral or disagree. And, as a  
15      survey design analytic person, you never use a  
16      three-item scale. You use a five-item scale,  
17      where you have agree, strongly agree, neutral,  
18      disagree or strongly disagree. But, again,  
19      that's a criticism of this particular study.  
20      And if I would have used this study in the  
21      report that I provided, I would have  
22      specifically hammered in at the fact that you  
23      don't use ever a three-item Likert scale when  
24      evaluating somebody's opinion or assessment.

25           Q.     So you've got some issues with the

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1 methodology of the Oregon survey but the  
2 results still validate the other surveys that  
3 you've mentioned?

4 A. It validates my view that this has  
5 acceptability compared to the Ohio studies are  
6 the verbal written responses, okay. I have  
7 real concerns about how some of these metrics  
8 were designed, how metrics -- excuse me, how  
9 the questions were, which is a three-item  
10 Likert scale. That's never done. That's  
11 period, end of quotation. It's never done.  
12 That's been shown in the literature. If you  
13 look at one of the individuals that I quoted,  
14 Donald Dillman from Washington State  
15 University, he was a worldwide, renowned  
16 expert on survey methodology. He will  
17 specifically hammer on the need to have more  
18 than three Likert scale items as responses.  
19 But the verbal responses, the written  
20 responses, are similar in tone and structure  
21 and nature.

22 Q. Were any of them specific to  
23 Kroger?

24 A. I have no idea if there are Kroger  
25 pharmacies in the state of Oregon, and I

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1 haven't looked at this in great detail. Like  
2 I said, I looked at this last night. If I was  
3 going to evaluate this, I would thoroughly  
4 look at it rather than try to come up with  
5 answers here after looking at it for ten  
6 minutes here today. That's not fair to me.

7 Q. You all submitted this to me. I'm  
8 trying to figure out exactly what this  
9 document is.

10 A. What did you just say?

11 MR. ELSNER: Whoa, whoa, whoa. We  
12 produced -- let me just clear the air a  
13 second. It was something that was provided to  
14 Dr. Fincham. He reviewed it. We provided it  
15 to you because it's something he considered.

16 It's completely fair game for her  
17 to ask you questions about it because it's  
18 something you considered. She wants to know  
19 whether you're going to rely on it at trial  
20 and what you're going to say about it and how  
21 it compares with everything else.

22 So I'm sorry about that, Ms. Wohl.  
23 Please continue.

24 Q. Do you need some time to look at  
25 this report? I don't have very many more

1       questions on it.

2           A.       What specifically were you going  
3       to ask me, and then I'll try to respectfully  
4       kindly answer appropriately?

5           MS. WOHL: Can I ask the reporter  
6       to read back my last question on this report?

7                   (Record read.)

8           Q.       I was asking about what you know  
9       about this survey, if there are any specific  
10      comments to Kroger.

11          A.       And I don't know that. I can't  
12      say that. I don't have any idea.

13          Q.       Do you know whether there were any  
14      specific questions or comments specific to  
15      opioids or the dispensing of controlled  
16      substances?

17          A.       And, again, because I didn't look  
18      at this report in my report, I have no idea  
19      what's in it.

20          Q.       Okay.

21          A.       I didn't really review it last  
22      night at all.

23          Q.       Okay. I take it this is not  
24      something you would be relying on to support  
25      your opinions if we were to go to trial in

1 this case?

2           A.       What I would request respectfully  
3       is the ability to look this over, and if I  
4       need to change something in my report, I would  
5       do so and indicate the sourcing for why I  
6       wanted to change it.

7 MS. WOHL: Okay. Can we take a  
8 five to ten-minute break?

9 MR. ELSNER: Sure.

10 THE VIDEOGRAPHER: Off the record,  
11 2:22.

12 (Recess had.)

13 THE VIDEOGRAPHER: On the record.

14 BY MS. WOHL:

15 Q. Dr. Elsner -- sorry. Dr. Fincham.  
16 I didn't mean to promote you. Do you plan to  
17 testify about any opinions that you have that  
18 are not written in your report in this case?

19           A.       At this point I don't have  
20 anything that -- that I would add, but that  
21 doesn't mean that something might come up that  
22 I'd want to add later on.

23 Q. As we sit here today, there's  
24 nothing that you would plan to amend in your  
25 report?

1           A.       No.

2                   MS. WOHL: I don't have any  
3 further questions for you. Thank you.

4                   THE WITNESS: Thank you for your  
5 courtesy today. I appreciate it.

6                   MR. ELSNER: We're not quite done.  
7 Don't compliment her too soon.

8                   EXAMINATION OF JACK E. FINCHAM, Ph.D.  
9 BY MR. ELSNER:

10                  Q.       Dr. Fincham, I just have a few  
11 questions that I just want to walk through  
12 with you.

13                  We talked a little bit about your  
14 experience with designing surveys and  
15 interpreting surveys.

16                  A.       Yes.

17                  Q.       And one thing that we -- that  
18 didn't come out in the deposition is do you  
19 serve as an editor or a referee for any  
20 peer-reviewed journals?

21                  A.       At this point in time I do, yes.  
22 I've been asked probably six to eight times a  
23 year to review a publication for potential  
24 publication. It's journals all over the  
25 world.

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1           Q.     Okay. And just roughly, how many  
2       journals have you served as an editor or  
3       referee on?

4           A.     I would say 60 in total. That's  
5       an estimate.

6           Q.     Okay. And in your role as an  
7       editor or a referee of peer-reviewed work of  
8       other professionals, have you examined survey  
9       designs and interpreted survey results in that  
10      role?

11          A.     Yes, I have.

12          Q.     Okay. And do you have an estimate  
13      as to how many times you've done that?

14          A.     I would say well over 250 times.

15          Q.     All right. And within the context  
16      of serving as an editor or referee for these  
17      journals, has it been the practice that people  
18      have relied upon your expertise in this area  
19      to review articles that focus on particular  
20      types of surveys, interpreting them and  
21      developing them?

22          A.     That's certainly the case, yes.  
23      I'm fortunate to be in that position, yes.

24          Q.     Okay. And have any of those  
25      articles that you've refereed or edited for

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1        peer review journals dealt with field studies?

2            A.        Yes, most certainly they have, and  
3        not only in my capacity as a reviewer for  
4        journals, but I'm also on several advisory  
5        committees for the Canadian Institutes of  
6        Health & Research, which is equivalent to our  
7        United States NIH and AHRQ, but in that  
8        capacity I've evaluated numerous surveys as  
9        part of grant resubmission processes.

10           Q.        Thank you.

11                  And have you ever been asked to  
12        speak about survey design and the  
13        interpretation of surveys?

14            A.        Yes, I have. I've been fortunate  
15        to have had those opportunities in Australia;  
16        in Vietnam; in Scotland; in Glasgow at the  
17        University of Strathclyde; in Aberdeen,  
18        Scotland; in Turkey; and in the United  
19        Kingdom, specifically Oxford.

20            Q.        Thank you.

21                  Is the use of a field study a  
22        reliable and professional form of surveys?

23            A.        Yes, it is.

24            Q.        Is it acceptable in the  
25        professional field -- in your professional

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1 field of survey design and interpretation to  
2 use a field study?

3 A. It is most appropriate and it's  
4 widely used, yes.

5 Q. Okay. Are there other experts in  
6 the field that have interpreted and used field  
7 studies as part of their work other than you?

8 A. The individual that -- that I rely  
9 upon, and it's not just me that relies upon  
10 him, but it's Donald Dillman. It's Washington  
11 State University. And in 1988 he wrote a book  
12 called "The Total Design Method." And in that  
13 book -- it's a comprehensive, evaluative  
14 document/book that looks at various types of  
15 survey research methodologies, when it's  
16 appropriate to use them, how they should be  
17 used, and what the impact of those has been.  
18 He's also followed up with additional books  
19 that I've referenced in my report. But Donald  
20 Dillman is, in my estimation, the gold  
21 standard reference point, and this is somebody  
22 that I was involved with as a student at the  
23 University of Minnesota in the research,  
24 design and methods courses that I took there,  
25 and Donald Dillman's book was priority number

1 one in those courses.

2 Q. Okay. In interpreting and  
3 analyzing the Ohio Board surveys in this case,  
4 did you rely upon the same methodology that  
5 Dr. Dillman, Mr. Dillman used in his texts?

6 A. Yes, I did, and that's basically  
7 an assessment of why this study is being done,  
8 what are you going to ask in the study or  
9 what's the results of the study going to be  
10 used for.

11 One of the key components that  
12 Dr. Dillman stresses in his book is are the  
13 questions that are asked understandable for  
14 somebody that's going to be reviewing them, so  
15 is the number of words, you know, that has ten  
16 syllables, you know, out of line. So it's  
17 something that has to be understandable, there  
18 has to be validity on the use of proper  
19 grammar. And, again, I focused on -- in the  
20 last series of comments about -- he talks  
21 about Likert scale and how many items you  
22 should have, what are the benefits and risks  
23 if you don't have a certain number of those  
24 kinds of items, whether it's three, five,  
25 seven, et cetera. So he goes through that in

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1 great detail and explains why it's important.

2                   In all of the things that I just  
3 mentioned about Dr. Dillman he references  
4 published works that have been published and  
5 are published in the field of survey research  
6 methodology and questionnaire design.

7                   Q.       And in interpreting the questions  
8 that were used in the Ohio Board of Pharmacy  
9 surveys, did they meet the standards as  
10 described by Dr. Dillman and as you've  
11 expressed as being professional?

12                  A.       They most certainly did, and  
13 Dr. Selzer agreed with how the questionnaire's  
14 items were designed as being appropriate, fair  
15 and nicely done.

16                  Q.       And do you have an opinion,  
17 Dr. Fincham, as to whether or not the Ohio  
18 Board of Pharmacy surveys were reliable and  
19 appropriate for use in this context?

20                  A.       I believe that they were entirely  
21 appropriate based upon how they were designed,  
22 what their intended purpose was to be, and how  
23 they were reflective of other studies that had  
24 been done. So the Ohio group relied upon  
25 survey questions that were done in Missouri as

1 well as elsewhere as well as the national  
2 study. So that to me -- if you can use  
3 previously approved and recognized questions  
4 as being appropriate in your particular study,  
5 that adds more reliability and validity to  
6 what it is you're doing and the results that  
7 you find.

8 Q. Were there other signs of  
9 reliability that you found in analyzing the  
10 Ohio Board of Pharmacy surveys other than  
11 comparing the survey to other surveys that  
12 were conducted?

13 A. I just think that from my  
14 assessment, if you look at who was responding  
15 to the questionnaire items and who was  
16 administering the surveys, it was the Board of  
17 Pharmacy that has oversight of all the  
18 pharmacists in the state, the pharmacists knew  
19 that when they were responding. To me it  
20 indicates that they were going to give  
21 responses that were heartfelt and that they  
22 hoped would make a difference in how their  
23 profession was -- was practiced.

24 Q. How many surveys did the Ohio  
25 Board of Pharmacy send out in this context?

1           A.       There was a study in 2020 as well  
2       as 2021.

3           Q.       And how did the two studies  
4       compare with one another?

5           A.       I think they were very, very  
6       similar as far as their responses, and there  
7       might have been some minor differences in the  
8       number, but you don't have any idea of who  
9       might have been a new pharmacist that wasn't  
10      able to respond in 2020. But if you look at  
11      the percentages for the Likert scale items,  
12      they're very, very similar, and most certainly  
13      the verbal responses were similar.

14          Q.       And do the similarity of the  
15      responses between the survey in 2020 and 2021  
16      have any impact in your opinion as to the  
17      reliability of the survey?

18          A.       They did have a major impact on  
19      how I viewed them as being reliable and valid,  
20      and to further validate it, the Ohio Board of  
21      Pharmacy used these to make some policy  
22      potential recommendations based upon what they  
23      found. That indicates to me that they felt it  
24      was valid.

25          Q.       There seemed to be a suggestion

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1 from counsel from Kroger that we weren't sure  
2 whether the only respondents to the survey  
3 were disgruntled pharmacists. Do you remember  
4 that line of questioning?

5 A. Yes.

6 Q. Okay. Do you agree that only --  
7 are you able to tell one way or the other  
8 whether the respondents to the survey were all  
9 disgruntled pharmacists or not?

10 A. If you look at the Likert scale  
11 items that had five data points that they  
12 could choose, strongly agree, agree, neutral,  
13 disagree, strongly disagree -- if you look at  
14 the range of responses, there were some people  
15 that were perfectly very satisfied with what  
16 the question was asking, and so I think the  
17 range of responses indicates to me that it  
18 wasn't just a negative response that was  
19 provided, it was a valid response across the  
20 board of people that were satisfied, highly  
21 satisfied, et cetera, and that had some  
22 variability based upon what the practice site  
23 was. And because there were numerous people  
24 that were responding from different practice  
25 sites that had the wide range of responses

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1 indicates to me that the questions were valid  
2 and people felt comfortable answering them  
3 based upon their work environment.

4 Q. And did the outcome of the Ohio  
5 Board of Pharmacy studies indicate a  
6 difference based on how people felt about a  
7 safe work environment based on whether they  
8 worked in a grocery store setting versus other  
9 types of job sites?

10 A. If you look in general at the  
11 chain environment, whether it is CVS,  
12 Walgreens, those corporate chains, or food  
13 market-based responses, they were very similar  
14 and they were quite different than what you  
15 saw in independent pharmacy practice as well  
16 as the institutional practice. There was more  
17 dissatisfaction in general expressed by the  
18 chain environment pharmacists, whether it was  
19 food market-based or general chains.

20 Q. And was there some indication  
21 within the survey results as to why  
22 pharmacists working in those environments felt  
23 that way?

24 A. If you look at the verbal written  
25 responses, it validates the point that I guess

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1 I was just trying to make, that people said  
2 I'm glad I work in an institution and not in a  
3 chain environment or I left the chain  
4 environment to go work elsewhere because I  
5 couldn't deal with the pressure, et cetera.

6 Q. I think that you had mentioned  
7 Kroger had done its own study, its own survey  
8 of its pharmacist employees. Did you review  
9 those surveys?

10 A. I did.

11 Q. Do those survey results have any  
12 impact one way or the other on how you felt  
13 about the reliability of the Ohio Board of  
14 Pharmacy?

15 A. Because the results were very  
16 similar in how the respondents both responded  
17 to the Likert scale as well as the written  
18 responses, that indicated to me that there was  
19 validity in the studies that the Ohio Board  
20 did exclusive of the Kroger study.

21 Q. There was some demographic  
22 information collected of respondents in the  
23 Ohio Board of Pharmacy survey; is that right?

24 A. Yes.

25 Q. Can you give us some examples of

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1       those?

2           A.        Sure.

3                   Some examples would be practice  
4       site, and I just referenced those,  
5       independent, chain, grocery store pharmacy,  
6       institutional practice, long-term care. So  
7       that's a demographic item. Also, the number  
8       of hours that were worked, the length of time  
9       that you had been in a specific position, the  
10      number of orders that you processed on -- in a  
11      time period. So those demographic items were  
12      included.

13           Q.       And did you review the number of  
14      hours worked or reported to have been worked  
15      by pharmacists in the grocery store setting  
16      versus other job sites?

17           A.       Yes, I did.

18           Q.       And what did you determine from  
19      reviewing that data?

20           A.       It wasn't a surprise to me, but  
21      it's still a bit of a shock in that there was  
22      a widely different number of hours that  
23      institutional pharmacists practiced and  
24      community pharmacy owners practiced versus the  
25      chain versus the food market-based pharmacies,

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1 and certainly the long-term care pharmacies  
2 were much less as well.

3 Q. And do you think there's any  
4 bearing on the number of hours you work based  
5 on -- compared to whether or not you feel  
6 you're working in a safe work environment?

7 A. I think as a general rule, the  
8 more hours that you work, that just adds  
9 incredible pressure to the work environment,  
10 and it certainly impacts patient safety  
11 because you just -- again, regardless of how  
12 smart you are, how efficient you are, the  
13 number of hours that you're in place has a  
14 tremendous impact upon pharmacists and how he  
15 or she carries out their responsibilities.

16 Q. With respect to the number of  
17 prescriptions filled in a shift, was that a  
18 demographic piece of information that the  
19 survey sought?

20 A. It was, and it was -- in my  
21 estimation -- it's my point of view, but it  
22 was incredible the number of prescriptions  
23 that were to be processed, and sometimes in a  
24 defined period of time.

25 Q. And was there a difference between

1 job settings, between the number of  
2 prescriptions you were to fill in a grocery  
3 store setting versus other job settings?

4 A. There was a vast difference.

5 Q. In what way?

6 A. In that the chain environment,  
7 whether it's food marked-based or independent  
8 chains, was much, much higher. And another  
9 factor that I didn't mention that was a  
10 demographic point were the number of ancillary  
11 personnel. So pharmacy technicians varied  
12 dramatically from site to site.

13 Q. And do the number of prescriptions  
14 that a pharmacist fills in a shift, does that,  
15 in your opinion, have any impact on safe  
16 patient care or safe work environment?

17 A. It has a dramatic impact.

18 Q. In what way?

19 A. Just simply because of the number  
20 that have to be processed. And we went  
21 through Table 1. Some of those factors have  
22 applicability to each and every one of those  
23 prescriptions. So if we're talking about  
24 hundreds, 300s -- somebody mentioned a defined  
25 period of time. That's just an excessive

1 workload.

2 Q. Dr. Fincham, outside the context  
3 of a pharmacy setting, are there any other  
4 types of settings where there are surveys that  
5 are done of workplace issues where they ask  
6 about a safe work environment?

7 A. There most certainly are, and just  
8 some examples might be individuals that work  
9 in a plant that manufactures automobiles or  
10 manufactures computer components or any other  
11 type of a commodity that might be produced.  
12 There's very similar types of studies that  
13 have been done.

14 Q. And in all those studies do they  
15 list all the specific concerns that an  
16 employer -- that an employee might face in the  
17 job site that might impact the safe or -- a  
18 safe workplace?

19 A. They are included, yes.

20 Q. They're specifically included or  
21 are they generally?

22 A. They're specifically included.

23 Q. There was a mention of -- of the  
24 COVID epidemic and -- and its impact on the  
25 survey results for the Ohio Board of Pharmacy.

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1 Had there been surveys that had been done  
2 prior to the COVID period that also reflect  
3 concerns by pharmacists about their working  
4 conditions?

5 A. There are. And one example is the  
6 Oregon study that was done in 2011. So that  
7 preceded by at least a decade the COVID impact  
8 upon pharmacy practice. The American  
9 Pharmaceutical Association surveys that have  
10 been done in subsequent years prior to the  
11 COVID outbreak. So those kinds of surveys  
12 have been there. They have been done because  
13 there have been workplace issues that have  
14 been in play long before COVID came into play.

15 Q. And, Dr. Fincham, do you have an  
16 opinion as to whether or not the surveys  
17 conducted by the Ohio Board of Pharmacy met  
18 the professional standards for conducting  
19 surveys?

20 A. They do, and it's based upon the  
21 referencing that I previously alluded to, the  
22 Dillman total design method of surveys from  
23 the concept stage to the end stage, where you  
24 look at what you're going to do with the data,  
25 so it very much followed very appropriately

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1 what Dillon would outline in his outline for  
2 decades.

3 MR. ELSNER: Thank you, Dr.  
4 Fincham. I don't have any more questions at  
5 this time.

6 MS. WOHL: I don't have any  
7 further questions. Thank you for your time.

8 MR. ELSNER: Thank you.

9 THE VIDEOGRAPHER: Nothing else.  
10 Going off the record, 2:49.

11  
12 (Deposition concluded at 2:49 p.m.)  
13 - - - - -  
14  
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1 Whereupon, counsel was requested to give  
2 instruction regarding the witness' review of  
3 the transcript pursuant to the Civil Rules.

4

5 SIGNATURE:

6 Transcript review was requested pursuant to  
7 the applicable Rules of Civil Procedure.

8

9 TRANSCRIPT DELIVERY:

10 Counsel was requested to give instruction  
11 regarding delivery date of transcript.

12

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1                   REPORTER'S CERTIFICATE

2         The State of Ohio,        )

3                                      ) SS:

4         County of Cuyahoga.      )

5

6                   I, Renee L. Pellegrino, a Notary

7         Public within and for the State of Ohio, duly

8         commissioned and qualified, do hereby certify

9         that the within named witness, JACK E.

10        FINCHAM, Ph.D., was by me first duly sworn to

11        testify the truth, the whole truth and nothing

12        but the truth in the cause aforesaid; that the

13        testimony then given by the above referenced

14        witness was by me reduced to stenotypy in the

15        presence of said witness; afterwards

16        transcribed, and that the foregoing is a true

17        and correct transcription of the testimony so

18        given by the above referenced witness.

19                   I do further certify that this

20        deposition was taken at the time and place in

21        the foregoing caption specified and was

22        completed without adjournment.

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1           I do further certify that I am not a  
2 relative, counsel or attorney for either  
3 party, or otherwise interested in the event of  
4 this action.

5           IN WITNESS WHEREOF, I have hereunto  
6 set my hand and affixed my seal of office at  
7 Cleveland, Ohio, on this 6th day of June, 2023.

8

9

10

11

12

Renee L. Pellegrino

13

14           Renee L. Pellegrino, Notary Public

15           within and for the State of Ohio

16

17           My commission expires October 12, 2025.

18

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Veritext Legal Solutions  
1100 Superior Ave  
Suite 1820  
Cleveland, Ohio 44114  
Phone: 216-523-1313

June 6, 2023

To: Michael E. Elsner, Esq.

Case Name: National Prescription Opiate Litigation - Track 7

Veritext Reference Number: 5894217

Witness: Jack E. Fincham, Ph.D. Deposition Date: 5/24/2023

Dear Sir/Madam:

Enclosed please find a deposition transcript. Please have the witness review the transcript and note any changes or corrections on the included errata sheet, indicating the page, line number, change, and the reason for the change. Have the witness' signature notarized and forward the completed page(s) back to us at the Production address shown above, or email to production-midwest@veritext.com.

If the errata is not returned within thirty days of your receipt of this letter, the reading and signing will be deemed waived.

Sincerely,

## Production Department

NO NOTARY REQUIRED IN CA

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1 DEPOSITION REVIEW  
2 CERTIFICATION OF WITNESS

3 ASSIGNMENT REFERENCE NO: 5894217

4 CASE NAME: National Prescription Opiate Litigation -  
5 Track 7

6 DATE OF DEPOSITION: 5/24/2023

7 WITNESS' NAME: Jack E. Fincham, Ph.D.

8 In accordance with the Rules of Civil  
9 Procedure, I have read the entire transcript of  
10 my testimony or it has been read to me.

11 I have made no changes to the testimony  
12 as transcribed by the court reporter.

13 Date Jack E. Fincham, Ph.D.

14 Sworn to and subscribed before me, a  
15 Notary Public in and for the State and County,  
16 the referenced witness did personally appear  
17 and acknowledge that:

18 They have read the transcript;  
19 They signed the foregoing Sworn  
20 Statement; and  
21 Their execution of this Statement is of  
22 their free act and deed.

23 I have affixed my name and official seal  
24 this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.  
25

Notary Public

Commission Expiration Date

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1 DEPOSITION REVIEW  
2 CERTIFICATION OF WITNESS

3 ASSIGNMENT REFERENCE NO: 5894217

4 CASE NAME: National Prescription Opiate Litigation -  
5 Track 7

6 DATE OF DEPOSITION: 5/24/2023

7 WITNESS' NAME: Jack E. Fincham, Ph.D.

8 In accordance with the Rules of Civil  
9 Procedure, I have read the entire transcript of  
10 my testimony or it has been read to me.

11 I have listed my changes on the attached  
12 Errata Sheet, listing page and line numbers as  
13 well as the reason(s) for the change(s).

14 I request that these changes be entered  
15 as part of the record of my testimony.

16 I have executed the Errata Sheet, as well  
17 as this Certificate, and request and authorize  
18 that both be appended to the transcript of my  
19 testimony and be incorporated therein.

20 \_\_\_\_\_ Date Jack E. Fincham, Ph.D.

21 Sworn to and subscribed before me, a  
22 Notary Public in and for the State and County,  
23 the referenced witness did personally appear  
24 and acknowledge that:

25 They have read the transcript;

They have listed all of their corrections  
in the appended Errata Sheet;

They signed the foregoing Sworn  
Statement; and

Their execution of this Statement is of  
their free act and deed.

I have affixed my name and official seal  
this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.  
\_\_\_\_\_  
Notary Public

Commission Expiration Date

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1 ERRATA SHEET

2 VERITEXT LEGAL SOLUTIONS MIDWEST

3 ASSIGNMENT NO: 5894217

4 PAGE/LINE(S) / CHANGE /REASON

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6 \_\_\_\_\_

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18 \_\_\_\_\_

19 \_\_\_\_\_

20 Date Jack E. Fincham, Ph.D.

21 SUBSCRIBED AND SWORN TO BEFORE ME THIS \_\_\_\_\_

22 DAY OF \_\_\_\_\_, 20\_\_\_\_\_. \_\_\_\_\_

23 Notary Public

24 \_\_\_\_\_

25 Commission Expiration Date

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Federal Rules of Civil Procedure

Rule 30

(e) Review By the Witness; Changes.

(1) Review; Statement of Changes. On request by the deponent or a party before the deposition is completed, the deponent must be allowed 30 days after being notified by the officer that the transcript or recording is available in which:

(A) to review the transcript or recording; and

(B) if there are changes in form or substance, to sign a statement listing the changes and the reasons for making them.

(2) Changes Indicated in the Officer's Certificate. The officer must note in the certificate prescribed by Rule 30(f)(1) whether a review was requested and, if so, must attach any changes the deponent makes during the 30-day period.

DISCLAIMER: THE FOREGOING FEDERAL PROCEDURE RULES ARE PROVIDED FOR INFORMATIONAL PURPOSES ONLY.

THE ABOVE RULES ARE CURRENT AS OF APRIL 1, 2019. PLEASE REFER TO THE APPLICABLE FEDERAL RULES OF CIVIL PROCEDURE FOR UP-TO-DATE INFORMATION.

VERITEXT LEGAL SOLUTIONS  
COMPANY CERTIFICATE AND DISCLOSURE STATEMENT

Veritext Legal Solutions represents that the foregoing transcript is a true, correct and complete transcript of the colloquies, questions and answers as submitted by the court reporter. Veritext Legal Solutions further represents that the attached exhibits, if any, are true, correct and complete documents as submitted by the court reporter and/or attorneys in relation to this deposition and that the documents were processed in accordance with our litigation support and production standards.

Veritext Legal Solutions is committed to maintaining the confidentiality of client and witness information, in accordance with the regulations promulgated under the Health Insurance Portability and Accountability Act (HIPAA), as amended with respect to protected health information and the Gramm-Leach-Bliley Act, as amended, with respect to Personally Identifiable Information (PII). Physical transcripts and exhibits are managed under strict facility and personnel access controls. Electronic files of documents are stored in encrypted form and are transmitted in an encrypted fashion to authenticated parties who are permitted to access the material. Our data is hosted in a Tier 4 SSAE 16 certified facility.

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Inquiries about Veritext Legal Solutions' confidentiality and security policies and practices should be directed to Veritext's Client Services Associates indicated on the cover of this document or at [www.veritext.com](http://www.veritext.com).